104

# CANDIDATES FOR THE REGULATORY CORRECTIONS CALENDAR

Y 4.SM 1:104-47

Candidates for the Regulatory Corre...

## HEARING

BEFORE THE

SUBCOMMITTEE ON REGULATION AND PAPERWORK

OF THE

## COMMITTEE ON SMALL BUSINESS
## HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

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DES PERES, MO, AUGUST 23, 1995

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Printed for the use of the Committee on Small Business

**Serial No. 104–47**

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93–467 WASHINGTON : 1996

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-052717-1

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# CONTENTS


Page

Hearing held on Wednesday, August 23, 1995 ..... 1

WITNESSES

WEDNESDAY, AUGUST 23, 1995

Church, Richard, president, Plumbing Manufacturers Institute ..... 24
Dorsey, Eileen, president, on behalf of Money Consultants, Incorporated ..... 56
Eber, John, on behalf of Interstate Brands ..... 43
Gillespie, Mary, CPA and attorney at law of St. Louis, Missouri ..... 49
Goss, Brad, on behalf of Whittaker Construction ..... 34
Harding, Scott, on behalf of SCI Engineering and Materials Testing ..... 31
Hayden, Dennis, on behalf of the Hayden Company ..... 29
Kent, Lee, president, Missouri Chapter, National Association of Plumbing, Heating and Cooling Contractors ..... 22
Mc Kinnon, Wayne, on behalf of Land Management, Incorporated ..... 44
Meara, Mike, certified financial planner, on behalf of Renaissance Financial ... 51
Redington, Richard, on behalf of J.E. Redington Company ..... 17
Strader, Pat, on behalf of Union Electric ..... 43
Stratton, John, on behalf of Union Electric ..... 46
Warren, Melinda, assistant director, Center for the Study of American Business, Washington University, St. Louis, Missouri. ..... 4
Whiteside, M.D., Leo, director, Biomedical Research Laboratory, St. Louis, Missouri. ..... 9

APPENDIX

Opening statement:
Zeliff, Hon. William H. ..... 64
Prepared statement:
Dorsey, Eileen ..... 66
Additional material:
Reinventing the Regulatory System: No Downsizing in Administration Plan ..... 73
National Roofing Contractors Association (NRCA) ..... 109
Letters from J. E. Redington Company ..... 113

# CANDIDATES FOR THE REGULATORY CORRECTIONS CALENDAR

WEDNESDAY, AUGUST 23, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON REGULATION AND PAPERWORK,
COMMITTEE ON SMALL BUSINESS,
*Washington, DC.*

The subcommittee met, pursuant to notice, at 9:30 a.m., at the Peter S. Drucker Auditorium, Edward D. Jones & Company Headquarters, Des Peres, Missouri, the Honorable James Talent (chairman of the subcommittee) presiding.

Chairman TALENT. All right. I will call this meeting of the Subcommittee on Regulations and Paperwork of the Small Business Committee to order and I am going to yield for brief opening remarks to Mr. Mike Esser of the Edward D. Jones Company.

Mr. ESSER. Thank you, Congressman Talent. On behalf of Edward D. Jones & Company it is my pleasure to welcome this hearing to our South Campus corporate headquarters.

We are delighted to have this hearing today in view of the fact that over 400,000 of this company's clients are small business owners and, Congressman Talent, we praise your efforts through the work on your subcommittee and full committee to reduce burdens, regulatory burdens, on those and other small business owners.

Thank you very much for being here. We support you in your work and we praise you in your ongoing efforts.

Chairman TALENT. Well, thank you. I appreciate that very much, Mike, and I wanted to give you a chance to welcome us because I wanted to thank Edward D. Jones for making this facility available. It is a little bit of a disruption in the business of your company and I appreciate your giving us, well, I guess most of the day in this auditorium is what we're planning to take.

The usual procedure, which I am going to follow to some extent anyway because this is actually a congressional hearing of a subcommittee, is for the Chairman to make an opening statement and then go to the panels.

I am going to do that. I want to, however, and in the course of making the opening statement thank all of you for coming, both those of you who are going to be testifying today, those of you who have given us input in preparing for this hearing, those of you who will be talking to me privately and to my staff privately. It is very important that we have these kinds of hearings in the Congress, both formal and information, because one of the things that I have commented on many times is that there is the mentality in the beltway that is insular, that is isolated, and unless you have a real

opportunity and make a real opportunity to hear from people who are actually dealing with the problems Government is causing, you tend to get isolated, so I am grateful to you all for being here today and wanting to participate.

Let me describe a little bit of the background of how we set this hearing up. We sent out thousands of notices, many if not all of you received those, about the subject of this hearing, which is the effect of Government regulations on the ability of small businesses to operate.

We received a lot of feedback from people. I was very pleased about it. We combed through it, picked out subjects that were appropriate. I wanted subjects within the jurisdiction of this subcommittee obviously, which meant we couldn't get directly into tax issues for example, which a lot of people wrote us about, subjects of interest to the, obviously, to the St. Louis area—that's the kind of feedback I was getting—and subjects that would be fit to cover in a hearing of this kind.

We were by no means able to exhaust all the available input and material with this one hearing. We have one, the opening panel, is going to be on the general problems of regulations and then four panels on specific subjects, but as I said before we have a lot of other material available and I was convinced early on in the process that we needed to have further hearings on this and I am going to plan one for October, so if you have a concern that is being covered at this hearing today, please let us know about it, and if you already have we'll follow up with you and we are going to have another opportunity in October.

Also, if you have a statement, if you are not testifying today and you have a statement that you would like to submit for the record, I will hold the record open for 10 days after this hearing and with unanimous consent—in fact, I guess almost anything I ask unanimous consent on today I'm going to get because there isn't anybody else from the subcommittee here, so I feel like I can pretty much do what I want. I'll just hold the record open for an additional 10 days so that you can submit a statement.

Also, while we are not going to be able to have on the record testimony other than in the panels that we have planned today, please feel free, particularly if you have not already done so, to talk to me during one of the breaks or after this hearing and I will be here.

We expect to wrap up about 2 o'clock or so, but that's very flexible—I mean it could be later, it could be a little earlier—or at least talk to one of my staff people. Mike McLaughlin is up here with me today but he will be available, and Barb Cooper, who many of you know, is the director of the district office here and will be available, so please let us know because we are going to have at least one other hearing, maybe more than that, and if your concerns are not covered, we want to have a chance to do that in the future.

The purpose of today's field hearing is to give business owners from the St. Louis and St. Charles business communities an opportunity to bring to the attention of Congress regulations that Congress should consider modifying or repealing.

When I became chairman of this subcommittee, I wanted to change the focus of it to making it easier for small businesses to create jobs and opportunities rather than making it easier for regulators to increase costs and paperwork for consumers and businesses.

Let me comment to you all about I have been in public office about 10 years. It seems longer than that sometimes. But in my conversations with small business people the two problems that are raised most consistently to me are, one, the problem of assembling enough capital to startup or expand business, and the other is the problems faced and caused by Government regulations.

There is a terrible illogic and demoralizing aspect to waste, the Government forcing people to do things that achieves nothing in terms of worker safety or environmental quality or justice or anything like that, but causes loss of economic opportunities, kills job creation, and demoralizes that segment of the community on which the whole economy depends, and people are now very familiar with the fact that the jobs that have been created in this country for a number of years now have been created by the small business community.

When the Government comes down hard on them and achieves nothing, it's killing the goose that is laying the golden egg and accomplishing very little. We are going to hear specific instances of that today.

Earlier this year the House made great progress toward the goal of regulatory reform and has passed several significant reform measures as part of the Contract with America.

The House has also recently passed a resolution establishing a new procedure called Corrections Day, which will make it easier to consider legislation to modify or repeal ambiguous Federal regulations. Essentially what we are going to do is once a month we are going to have a morning on the legislative calendar devoted to bills to repeal particularly obnoxious regulations and laws that oppress the creation of jobs and economic activity in the country. We've already had one of those.

We are going to look at specific areas and a number of areas in the economy and it should give us some idea about what regulations business owners think that Congress ought to consider repealing.

I am hopeful that these hearings will produce regulations that I can then go back to the Congress with and get on the correction day calendar for repeal.

I want to, before I introduce the first witness, say that as I was driving to work this morning I was listening to a program about the importance of healthy activity and making sure that we take steps to relieve stress and so depending on how the panels go I am probably going to take a 5-minute break or so this morning. I just wanted to let you all know that we'll have that available and so that we all take a step toward a healthy lifestyle.

At this time I would like to introduce the first panel, which is only one witness. Her name is Melinda Warren. She is the associate director of the Center for the Study of American Business at Washington University. She and her associate, Barry Jones, re-

cently published a study entitled "Reinventing the Regulatory System: No Downsizing in the Administration Plan."

Melinda, would you like to come up and take a seat? The way we do these things is the witnesses will make a statement. They usually have a prepared statement. I always ask them to feel free to summarize their prepared statement rather than reading it for us, although you can if you want to, and then the members of the committee, which in this case is me, ask questions and we are going to hear from Ms. Warren are some general trends regarding regulatory reform that the administration has been involved with, and I want to ask her some questions about regulations.

Please, Ms. Warren, go ahead.

Ms. WARREN. Thank you.

**TESTIMONY OF MELINDA WARREN, ASSOCIATE DIRECTOR, CENTER FOR THE STUDY OF AMERICAN BUSINESS, WASHINGTON UNIVERSITY, ST. LOUIS, MISSOURI.**

Ms. WARREN. It's a pleasure to be here this morning and to have this opportunity to testify before the Subcommittee on Regulation and Paperwork.

I have to tell you that I am really excited about the House's new corrections day and all the information that Congressman Talent will be able to gather today for that purpose.

The American people approve of action on the regulatory front. Only 16 percent of those polled say that Congress has gone too far cutting Government regulation. Much has been written and said about lowering the regulatory burden on American businesses and citizens in recent years. Public dissatisfaction with the burden of regulation has been growing.

A recent Times-Mirror poll reported that 63 percent of the American population feels that Congress has not gone too far in cutting regulation.

Last year in November people embraced change by electing a Republican-dominated Senate and House for the first time in 40 years. Its Contract with America promised changes in many regulatory agencies including property rights, cost-benefit analysis and a moratorium on regulation. The President has also gotten involved in supposed regulatory relief. In March he announced a "Reinventing Government" initiative that would include allowing Federal inspectors to give small enterprises more breaks on fines and commanding the Environmental Protection Agency and Food and Drug Administration to slash paperwork requirements and deregulate manufacture of low risk products.

With all this talk of reform, Americans should expect that spending for and the staffing of Federal regulatory agencies would be decreasing. Unfortunately, this is not the case.

I'm the associate director of the center for the Study of American Business at Washington University here in St. Louis. The center is a nonpartisan research organization which was founded more than 20 years ago, and we have monitored trends in Federal regulatory spending for the past 20 years. We have accumulated 27 years of data, and I have had the pleasure myself of monitoring these trends for the last 7 years.

My analysis evaluates the spending and staffing of 55 regulatory agencies. Agencies that work on taxation, subsidy or credit functions are not including in this analysis.

A few examples of these agencies that are not included are the IRS, the Commodity Credit Corp., and the Federal Housing Administration. Agencies that administer Federal contracts and procurement are also not included.

This year's analysis of the President's 1996 budget shows that both spending and staffing for these Federal regulatory programs will reach an all-time high. The 1996 budget calls for $16.6 billion in spending for regulatory programs. This is a 6.3 percent increase over 1995 estimates.

After adjusting for inflation, this represents a 3.3 percent real increase. This is the largest increase in Federal regulatory spending in over 4 years. Absent Congressional budget cutting, a new peak in regulatory spending at the Federal level will be reached in 1996.

Now this growth probably surprises all of you. I know it did me. Last January I was interviewed by the "Economist" magazine. It was before the budget came out and they asked my opinion on what I thought trends in regulation would be in 1996.

I told them that I believed, because of the mood of the country about regulation, that we would have significantly lower regulation in the budget, but I was wrong.

Regulatory expenditures in President Clinton's proposed budget are actually growing faster than the whole budget. In 1996 the real increase for the entire budget is projected to be only 1.8 percent. As I said earlier, regulatory programs will grow 3.3 percent in real terms.

Staffing figures for regulatory programs will also reach an all-time high in 1996. We expect that Federal regulatory personnel will reach 132,000 people. This is less than a 1 percent increase over projections for 1995, but it is an all-time high.

The number of people needed to run the Federal regulatory apparatus of the Government has risen 5 percent since 1992. The President has promised to cut 250,000 people from the entire Federal bureaucracy but Federal regulatory personnel as a group will not feel the knife. Their numbers will continue to grow.

At the individual agency level, of the 55 that I talked about before, 33 agencies will receive larger budgets in 1996 than in 1995; 24 will rise more than the 6.3 percent for the budget as a whole; 22 will lose funding. Most everyone is getting a raise, in effect.

For staffing this is not the case. Most will lose staff; 13 will remain at the same level; and 18 will increase. Sixteen of the agencies show an increase greater than the 1 percent for the whole budget.

Here is a sampling of agencies that will get large budget increases in 1996: The Food Safety and Inspection Service; the Federal Railroad Administration; OSHA; EEOC; and EPA. These are increases that are much larger than the 6.3 percent overall.

A few of the agencies that will have increased staffing are EEOC; The Commodity Futures Trading Commission; and SEC.

Chairman TALENT. Ms. Warren, I'd like to interrupt. This is what the President's asked for.

Ms. WARREN. Right.

Chairman TALENT. That doesn't mean what he is going to get.

Ms. WARREN. That's true. Many of the agencies are not getting increased staff, even though they are getting increased budgets.

I doubt that this will all happen but this is what he has asked for.

I haven't tried to put compliance costs on these numbers, even though several people have in the past, including my boss, Murray Weidenbaum, at the Center.

He estimated in 1976 that Federal regulations cost $63 billion a year. A few years ago Tom Hopkins at the Rochester Institute of Technology did another estimate of compliance costs. In 1990 he said that compliance costs for Federal regulation are about $400 billion a year. That number is a little higher now.

If you put those into real terms, take out all the inflation, that is about a 200 percent increase over the last 20 years in the cost of compliance.

I don't want to imply that regulation is necessarily evil. There are good ways and bad ways to regulate and there's good and bad regulations. Properly designed regulations can correct shortcomings in the market like for free goods like air and water, but there is no justification for doing things in less than cost-effective ways. Things need to be sensible.

But regulations that stifle competition, industry-specific rules that limit entry or price, nearly always cost the Nation more than the benefits derived by the groups that the rules are designed to protect.

The industry-specific rules are usually labelled economic regulation, while those dealing with pollution and other externalities are categorized as social regulation. Social regulation is by far the larger of the categories that I have analyzed in my research, comprising more than 80 percent of the funds for Federal regulatory spending.

Social Programs relate to consumer safety and health, job safety, environment, and energy.

Overall, the budget for social regulatory programs will grow by slightly more than the entire budget for 1996, 7.1 percent.

The other broad group of regulatory agencies, economic, has historically received less funding and fewer staffers than the social group and they'll get a boost of about 3.4 percent in 1996 if the budget is approved.

I would just like to conclude by saying that Federal regulatory spending is accelerating from the lower rates of expansion witnessed at the outset of the current administration. It is rising faster than it has since the early days of the Bush administration, when we had significant growth in regulation.

Even with the public's call for less regulation, President Clinton's 1996 regulatory budget is the largest ever. The administration's talk about reinventing the regulatory system has so far not been translated into action.

Thank you.

Chairman TALENT. Thank you for that testimony, Ms. Warren.

I want to go over some of the points you make in your statement. Let me say that we can make Ms. Warren's statement available to

those who want it. All you have to do is let us know and we will be happy to have a copy made.

It is very interesting, particularly——

Ms. WARREN. If people would like to have it.

Chairman TALENT. There is a longer report available—particularly the graphs at the end of the statement regarding trends in regulatory spending and regulatory staffing.

Let go over a little bit with you the cost of regulations.

Your statement mentions that the best estimates we have that regulation costs the American consumer about $400 billion a year.

Ms. WARREN. In 1990, yes.

Chairman TALENT. Which works out to about $4,000 per family.

Ms. WARREN. Right.

Chairman TALENT. Is there any comprehensive estimate of how many jobs are lost because of regulations? I have a follow-up after asking you that.

Ms. WARREN. I am not aware of the exact number but with those kind of costs there are some job losses.

Tom Hopkins actually did a study for us on environmental regulation and the jobs that are lost because of the environmental regulation. These losses were substantial.

Chairman TALENT. Most of the evidence that I have is anecdotal, from specific business people. We are going to have—the next panel is going to discuss the effect of the change in regulatory climate on the medical device industry in the United States in the lost jobs there and there are people who can give you concrete statements about lost jobs and economic growth as a result of regulations, but it is harder to quantify it in the economy as a whole, must less quantify how much of it is due to regulations that are achieving nothing.

I mean could you describe a little bit for the record and for the audience what your boss, Murray Weidenbaum, calls a false conflict, in other words where there isn't really even a tradeoff. You are not getting anything in return for the regulations.

Ms. WARREN. Economic regulations are classic examples of what you are talking about. The consumer is paying a much higher price for products because of regulation in that case.

Some key regulation has happened in that area—trucking, air, rail—but those are the classic examples of what you are talking about, I believe.

Chairman TALENT. Again, a lot of the evidence I have is anecdotal. I get around a fair amount.

Just yesterday I had a business person tell me that they were threatened with a $10,000 fine from the Department of Transportation because the labelling they had on some shipments was "UN" instead of "U.N." so they had to go back and redo all the paperwork, costing them thousands of dollars and achieving nothing, so that money of course that they can't afford, and the stories of that are just legion.

Let me go into another area and ask if there's any scholarly research on this, because I know of this also.

It used to be when you talked to people about regulations they complained it's wasteful or it's stupid or there's red tape. The last few years I talk to people and there is a growing fear that people

have that, almost that we have a climate, a regulatory climate, where there are a whole lot of honest people who are not conscious of doing anything wrong and do not want to do anything wrong and yet are afraid that some agency of the Government can come in and either in some cases put them in jail, in other cases just take away their life really—now is there any studies done of that aspect of one down sides of regulations and the effect that may have?

Ms. WARREN. At the Center we haven't done anything specifically addressing small business in this area.

One of our colleagues at the Washington University Law School is looking into the problem of environmental criminals. Even though he is a liberal, which is interesting, he feels that the environmental criminal laws are totally wrong. the personal property aspect of regulation is something we've done a lot of work on, the takings aspect, there is a greater impact on individuals than on companies. If you have an endangered species on your land, the Government can basically take your property without providing any compensation at the current time. We are hoping for changes there.

Chairman TALENT. Again the next panel is going to be on the FDA and I had a couple of years ago three different companies contact me independently in the space of about 4 weeks and furtively told me stories about dealing with the FDA and then the last one said I'd like to go and do something about this and they said no, if they find out we're complaining they could shut us down. That is a very real fear that people have and I wish there was some way to quantify what that does to the desire to expand and to grow on the part of business people and of course returning nothing. I mean if you got something in return for it in terms of cleaner foods or healthier drugs or something, it would be different.

Do you all study the impact outside of private sector businesses because another trend that I have noticed is concerns and complaints and fear on the part of nonprofit organizations, educators, professionals that you don't normally think of as business—dentists and that sort of thing.

Have you done a lot of work or any work in that area?

Ms. WARREN. Not really.

Chairman TALENT. One other point I wanted to make and I do appreciate very much your testimony, your taking time to be here, to ask you about, because your testimony is about the Clinton administration and I think you established pretty conclusively that notwithstanding what we may be hearing we are not seeing from the administration anything like an aggressive attempt to reform the regulatory process, whether in the guise of Reinventing Government or anything else.

I do think out of fairness we need to make the point that if you look at regulatory costs and activities except for a parenthesis in the 1980's when the Reagan administration made a concerted attempt to reduce the regulatory burden on the American economy it has grown under every President——

Ms. WARREN. Right.

Chairman TALENT. [continuing]. of both parties since people began keeping records——

Ms. WARREN. That's true—except in 1982 and 1986 those are basically the only times.

Chairman TALENT. That's right, and you mentioned the Bush administration, chiefly in the first couple years it grew.

Ms. WARREN. Tremendous growth.

Chairman TALENT. Unless there is really a concerted attempt to prevent it from happening, it tends to grow apace.

Ms. WARREN. Right.

Chairman TALENT. Does that lead to any conclusions about who has control over this? I mean when you are talking about the President vis-a-vis the legislative branch, because we have had a pretty consistent mind-set in Congress during this period of time.

I mean Presidents have different philosophies but Congresses have pretty much the same mind-set. They are really the ones who control the regulatory agencies, aren't they?

Ms. WARREN. Yes. I believe so, but the President does set the budget and he has some control over the budgeting process.

Chairman TALENT. That's true and through the Office of Management and Budget, places like that, he can try and control new regulations.

All right. I thank you, Ms. Warren, for your testimony. I appreciate your taking the time to be here today.

Ms. WARREN. Thank you.

Chairman TALENT. Thank you so much.

That concludes the first panel. It was very expeditious. We may actually stay on time, which would be a first for Congress.

Now we are going to get into some panels dealing with specific regulatory problems, experiences that in particular are businesses or segments of industry.

The witness for the second panel is Leo Whiteside. Dr. Whiteside, if you would come forward.

Dr. Whiteside is the director of the Biomechanical Research Laboratory of Barnes West County Hospital and he is an orthopedic surgeon who specializes in total hip and knee replacements as well as several other implantable medical devices.

Dr. Whiteside will be discussing the difficulties that medical devices manufacturers face in getting the Food and Drug Administration to approve new devices and improvements on existing devices.

Dr. Whiteside, thank you for the exhibits today. I know you have a statement for the record. Please go ahead with it.

Dr. WHITESIDE. My pleasure.

## TESTIMONY OF LEO WHITESIDE, M.D., DIRECTOR, BIOMEDICAL RESEARCH LABORATORY, ST. LOUIS, MISSOURI.

Dr. WHITESIDE. Thank you very much for the opportunity to discuss this. It needs discussing.

I'll tell you that the current mechanism that we work with for approval of medical devices does not work. It is ineffective. It doesn't help anybody. It's intimidating and it is extremely expensive. I'd say it ought to be changed and I think everybody in this industry says it ought to be changed as well.

As an orthopedic surgeon who uses these implants and as an inventor and owner of a small company that develops and markets these implants, I couldn't be more adamant in that regard.

We are working under the Food and Drug and Cosmetic Act of 1938 and an amendment for safe medical devices in 1976. Those laws divided devices, medical devices into Classes 1, 2, and 3 and maybe we'll talk about Class 3, which is a category of devices that are possibly unsafe or have new technology that really hasn't been proved.

To get approval of that type of device you have to go through what is called a premarket approval process. That is a clinical study with about 200 patients followed for about 2 years with 40 or 50 cases done in various centers.

I will tell you that it is extremely expensive. It takes about 4 to 8 years to do a study like that. It costs between $3 and $10 million dollars to do a study like that so, it's an expensive process.

Not only is it expensive, but as time has passed, in fact early on it became very apparent that it was an intimidating process as well. The FDA didn't look kindly on these studies. They were mostly rejected and prolonged. They were unsuccessful.

Then not only that but when we finally got something approved through this mechanism it was frozen in time. To change it required another similar study or a very expensive paperwork exercise, so basically it didn't work well.

Very few companies, small and large, especially small companies attempted to go this route.

Now the law did provide for something else, an easier process called a 510K application. I'm not sure what 510K means but it allowed a developer, a company to submit a new product and prove that it was 1976 technology or earlier. It had to be 1976 technology or earlier or otherwise it had to go through this extensive approval mechanism.

You can imagine what most companies did, what most innovators did. They tried to develop something slightly different with 1976 technology, and I'll tell you, that has been going on for 20 years now without any change.

The implants we have available to use now are either approved to this premarket approval mechanism, frozen in time, or else pretty well proved to be 1976 technology—well, except for some exceptions we kind of stuck through. We have all been almost a little deceptive. We have come up with mechanisms to make it look like an old car but really under the hood it's a new car and that is to the great benefit of the patients in this country and to the medical device industry because it has made us look like we are moving forward when somebody's got the brakes on.

Chairman TALENT. Dr. Whiteside, tell us some of the devices that you are talking about when you are talking about implants.

Dr. WHITESIDE. Great. I'll give you an example that I have developed myself. It's a total hip replacement. It's called the Ortho-Lock Hip and we had great thoughts for this hip implant and actually in the early FDA study it worked well in all the centers and we submitted our data and it seemed to work well.

But since we have released it on the general public it became apparent that it was difficult to use. Only an expert could use it and we all stopped using it. It's FDA-approved for use without bone cement but it really can't be used and probably shouldn't be used for the applications that it is approved for.

I'll give you another example—kimylpepane. That is an injectable enzyme that can be injected into a lumbar disk and probably prevent surgery in the right hands. We used it very minimally until the FDA required a study be done. A large FDA study was done. It appeared to be safe and effective through the FDA study. It was released on the public and quickly it became apparent that it was not safe and not effective. There were deaths due to it and it is currently approved by the FDA as far as I know, yet not used.

There are many other things that we need to have approved—cementless knee replacement—many other medical devices that would help arthritic patients that are not approved by the FDA. Bone cement—the bone cement that we use is pre-1976 dental cement. We started using it as a bone cement to fix implants to bone. It became frozen in time by the FDA. We have to now use only the pre-1976 cement and we have been unable to develop a new bone cement. There are all sorts of new possibilities that the dentists are using. In fact, they kind of laugh that we are using polymethomethaculate bone cement still. That is early 1970's technology, yet we are having to use it for 1995 hip and knee replacements.

Chairman TALENT. Can I jump in just to clarify, and tell me whether my understanding of this is right.

We are not talking about medical devices—you are talking about medical devices that are implanted in the body, right?

Dr. WHITESIDE. Yes.

Chairman TALENT. So if it is something that is not implanted, you are not talking about that?

Dr. WHITESIDE. The nonimplantable devices are usually Class 1 or Class 2.

Chairman TALENT. So that you can still get on the market for those things?

Dr. WHITESIDE. You can still get on the market with them and you can innovate with them and change them pretty freely. They still have to be registered and looked at by the FDA.

Chairman TALENT. Now I hear you telling me that if it is a device that you would implant in the body and it is completely new technology so you can't even claim that it was known prior to 1976, then you have to go through this extremely cumbersome and long process that's very difficult to get through, right?

Dr. WHITESIDE. That's correct.

Chairman TALENT. So what you are now saying is the law has this kind of arbitrary safe harbor or semisafe harbor for technology that was known in 1976 but is different in some way, some improvement or adjustment on it, and everybody is trying to jump through that little hole, right?

Dr. WHITESIDE. Yes.

Chairman TALENT. Because that at least it is possible to get FDA approval on, right?

Dr. WHITESIDE. Yes.

Chairman TALENT. But even that is more difficult than it used to be, isn't it?

Dr. WHITESIDE. Yes.

Chairman TALENT. What you call the 510K?

Dr. WHITESIDE. Yes, it is more difficult than it used to be. It's been extended from a couple of months to a year or 2 years in some cases.

Chairman TALENT. Yes, and it just goes on pending.

One of the things that is striking about Dr. Whiteside's statement which again we will have available for those who want it is that there is this process under the regulations which you would be trying to qualify for in order to avoid the complete regulatory process but the FDA has traded this whole alternative regulatory process, which you must now satisfy in order to avoid the other regulatory process.

Dr. WHITESIDE. Yes. The alternative is getting tougher. It got very tough until a couple of months ago when there has been some rumors of it loosening up a little bit.

I must say that my dealings personally with FDA people have been fantastic. When I call up someone in the FDA they are friendly, courteous and they try to do the best they can, but often they are a different person than you called last month. Now they are very eager to get things to work well. They know how important their job is. I just don't think they can do it.

They would love to but I don't think they can see a way to do it.

Chairman TALENT. I keep interrupting your train of thought but go ahead.

Dr. WHITESIDE. Well, let me say that I have recently visited another country. I went to Europe to one of the International Federation meetings and I found that the situation is totally different there. They have hardly any regulation in many of the developed countries and that is where it all going on—new ceramics, new bone coatings, new porous coated metals, new bone-encouraging coatings for implants are being developed in these countries and as a matter of fact, some of our best companies are going there to do their development and to do their initial trials.

I have a videotape I would like to show, if I could, that will go over some of this.

You can go ahead and bring that.

Chairman TALENT. Why don't we go ahead and set up that videotape recorder.

Mr. WHITESIDE. I'll just make another statement or two more while we get that started.

A country like France where regulation is rampant actually has little regulation in orthopedic devices and many other medical devices and so they are beating us. There is no doubt about it. What they can do and what we can do are hardly comparable in many regards.

Chairman TALENT. I guess we need to kill the lights while we look at this?

Mr. WHITESIDE. Yes. I'll back up a little.

I mentioned the pre-1976 technology and so I will show a couple of things that were available before 1976. This is a Fred Thompson prosthesis; it is for a broken hip. It replaced the ball of a broken hip and we had those even in the 1950's. This is a total hip replacement that puts a plastic socket in the patient's socket and uses a

metal ball to replace the ball and socket joint. That stem goes down the center of the bone.

This is from a component from a total hip—a total knee replacement. It is plastic on the lower part and metal on the upper part. We had those to a limited extent in the early 1970's.

This is bone cement being pressed into the surfaces of bone during a total knee replacement. That is the implant being applied and then finally driven tightly onto the bone.

Now, that bone cement hasn't changed in the last 20 years. You can see the fluffy, white material that attaches the implant to the bone. It is good in some ways but it really is old technology and we have technologies now to apply implants directly to bone.

As a matter of fact, since 1976, we have developed a lot of them. Many of them are commercialized first outside the United States. Many of them are kind of snuck by with the 510K mechanism.

This is a total hip replacement that I developed myself that has a porous coated upper portion and a modular lower portion. This porous metal allows the bone to grow in and attach this implant permanently to bone. It is advantageous in many ways. Here is the implant applied right against the bone without any intervening cement. As time passes, the bone attaches that implant firmly to it and probably will be there for the patient's lifetime.

Only recently have we found a way to sneak this through the back door and finally get it approved for sale without cement. As a matter of fact, we have been selling it for use with cement, but it can't even really be used with cement.

This is a total knee replacement that has gotten through the PMA study protocol. This is one that is better in some ways but can't get through this protocol. Actually, the FDA has sort of acted like a patent office to patent that first device and those of us who would like to develop a device that is similar in many ways can't. However, in Europe they can, there's no problem with that.

When I visited the EFORT meeting in Munich about a month ago, I ran across all sorts of technologies that came out and got into the air in the United States but are now being developed outside the country.

This is the British Journal of Bone and Joint Surgery and they are now selling a menial knee replacement, a knee replacement that has a lot of features that we would like to use currently in the United States but can't because of the stultifying regulatory atmosphere.

This implement for sale in the United Kingdom and generally throughout Europe and the Orient has a lot of features that orthopedic surgeons could use to benefit their patients now.

This is a very interesting advertisement in an American orthopedic surgeons' journal. All sorts of ways to lock the implant to the bone. This is a ceramic cup and a ceramic ball, a ceramic-on-ceramic bearing surface. It is likely to never wear out and never cause reaction.

But look down in the corner. It says Cera-Fit is not available in the United States. It is not even made in the United States either, despite the fact that we have remarkable ceramic technologies in this country.

This is a metal-on-metal total hip bearing surface. Really, that has been around for a long time but just for—because of some changes in size, the United States. FDA is holding this back. It is really going well in Germany and the rest of Europe.

We have this metal technology, it is pretty simple metal technology to do. There are companies through the country that could do it but our patients are not allowed to have that.

This is an interesting ad from an American journal as well—excuse me, from a British journal. This is an innovative way to create a surface that bone will attach to, that will be friendly to bone. That is from 3M to 3M, the big American company. It is commercialized outside the United States; that is not even available in the United States. They make no effort to commercialize that in the United States.

Could we stop this for just a second? I need to say a little bit about this.

This is an example of polyethylene, the plastic portion, cut in a thin section and looked at very carefully. I guess that is about a 200-X magnification. It is terrible material yet it is approved by the FDA. They have no way of looking at this polyethylene and telling if it is safe or not; it passes their guidelines so it is approved. But in industry we found that it is not acceptable in certain mechanisms and certain ways that it is handled.

OK, you can go ahead and run that.

So almost all the industries now who are dealing with polyethylene implantable devices have developed their own ways of looking at polyethylene, finding the defects in it and then developing smoother polyethylene, polyethylene that is stronger, tougher and much more reliable for patients. This is something that industry has done for itself and has not been done through the regulatory process.

Now, we developed slightly innovative ways to use bone cement better. Bone cement has been with us now for 25 years, the same bone cement that we started with to begin with. I will say there are small companies in this country that have new technology. This is Bio-Coat. They have developed a technique to apply a very thin bone-conductive surface to a porous coated implant that is likely to make it much more effective. This is a microscopic view of the porous metal. The white coating over it is hydroxyapatite, a bone-like substance that conducts bone into this porous metal to make it more acceptable to the patient's bone. This is an implant that is available through custom route only in the United States. That should be available commercially to all orthopedic surgeons who are capable of doing the operation because it has clearly been shown to help.

Here is what I suggest. Get rid of the clinical studies altogether and extend something like the 150K mechanism to simplify and allow us to move these products rapidly into the surgeons' hands and to help the patient. I think there has to be some trust of the manufacturers who create products and of the professionals, the doctors, who use them. Otherwise, we are going to be stuck for another 20 years with 1976 technology.

Chairman TALENT. Thank you.

Give me again, in a way a layperson can understand it, an example of a device or a method of treatment that you are not able to get into the market. You mentioned cement. Here you are telling me that there are improvements in the kind of material that you use in him replacements that we are not able to have access to in the United States because of this? Is that what you are saying?

Dr. WHITESIDE. Yes. A good example of this is one I just showed. A coated, hydroxyapatite coated porous metal total hip replacement component. That has been shown with excellent studies to be effective. But those studies have not been done in the specific manner asked for by the FDA.

The route is so intimidating that people don't even attempt to run it.

Chairman TALENT. Let's bring this down to real people, real consumers, real patients. This means that people are getting—patients in the United States, Americans—inferior hip replacements which maybe don't last as long, are more painful, are not as reliable as people are able to get in Europe because of this? Is that a fair statement?

Dr. WHITESIDE. Yes, that is certainly my opinion.

Chairman TALENT. You are an orthopedic surgeon, right, you're a physician? Is there any relationship between this kind of excess, what you are talking about, and safety? I take it you are telling me some approval process is probably necessary. But have these delays in the last 2 years in particular added to the safety? I mean, are we getting anything for this?

Dr. WHITESIDE. No, it has not added to the safety. It has probably made them less safe. You get a false sense of security. The FDA has approved this particular mechanism of choosing polyethylene; we'll use that. But, as a matter of fact, to be really safe for the patient, you have to look at it in much more detail and you have to look at the current developments in plastics to understand what you ought to do to improve things for patients.

I'm sure I am not telling you anything you don't know, the FDA doesn't have that information. They are not in a position to know what is newest in polymers and what tests industry should be doing to choose the correct polyethylene type for clinical use.

Chairman TALENT. So here is a set of regulations. I am going to get to them in a minute, who is responsible, because you made a very good point before about the people working—here is the set of regulations that is dealing on its own terms, it is designed to protect the comfort and safety of American medical patients and, in fact, it is having, in your opinion, the opposite effect.

Dr. WHITESIDE. The opposite effect.

Chairman TALENT. I am going to put some facts in the record, not denying your statement, but that we have collected regarding the overall impact on the industry. We are not now talking about the comfort of the average American, beyond comfort really to health. Let's look at the impacts on the medical device manufacturing industry since the Congress passed the Save Medical Device Amendments of 1990, which I think has triggered a lot of the worst problems in this. You mentioned this has been going on for 20 years but we really have a crisis now. I am just very briefly going to put this in the record.

There is a crisis in the U.S. medical device manufacturing industry. Over the past 10 years, the United States share of the $93 billion global medical device market has fallen from 60 percent to 48 percent. This has had a significant impact on employment in the United States. Before 1993 the U.S. employment in the medical device industry reached 282,000. Job growth increased by an annual rate of 3.1 percent, significantly higher than the 1.4 percent decline in manufacturing employment as a whole.

Since 1993, however, employment growth has stagnated with 48 percent of U.S. firms reporting they have cut jobs in the last 2 years. This is particularly striking since the global market for medical devices is growing at an annual rate of more than 10 percent. The movement in the industry to overseas operations is estimated to cost between 40,000 and 50,000 new jobs and lost employment opportunities in the medical device industry.

No doubt, the United States is the leader in medical research overall and yet we are falling behind in the introduction of new devices.

Dr. WHITESIDE. That is correct.

Chairman TALENT. Really, the only thing you can point to causing this is the change in the law and the effect on FDA approval.

Some additional statistics. Again, I want to emphasize to the audience that when the doctor talked about the 510K application, that is supposed to be the summary, the quick procedure, in which you avoid the longer procedure, right? It is pegged on something which really doesn't make any sense, whether the technology is similar to the pre-1976 technology. That, to me, seems completely arbitrary.

Just for the record, prior to the enactment of the Safe Medical Devices Amendments of 1990, the manufacturer generally could go to market with his product 90 days after notifying the FDA. Following enactment of the new law, the premarket notification process was upgraded to include an FDA evaluation of the safety and effectiveness of low- to moderate risk devices. The upshot? The regulatory time limit for 510K applications is supposed to be 90 days. In 1994, the average review time was 200 days, over 6 months for the summary procedure to get something into the market and that is assuming you can peg it to 1976 technology.

The longer technology, I mean if you have to go through the clinical studies beforehand, the review time is supposed to be 180 days. In 1993, the average review time was 437 days. I hear what you are telling me, these people just aren't going to do that. They are going overseas with the devices?

Dr. WHITESIDE. They are going overseas with the devices, they are finding some way to attempt to keep business going in this environment. It's difficult, though.

Chairman TALENT. As they market overseas, they take the operations, the manufacturing operations overseas as well.

Dr. WHITESIDE. Yes, that's right.

Chairman TALENT. So we have a set of regulations that has hurt the health of Americans, cost them comfort, cost them jobs and, as far as you can tell, achieved nothing?

Dr. WHITESIDE. Achieved worse than nothing.

Chairman TALENT. Now, let me say, Doctor, for the record, my opinion on this, because you mentioned—I think it is very important to say—there are good people working at the FDA, there are good people working at each one of these agencies.

Dr. WHITESIDE. Yes.

Chairman TALENT. I really believe that. I deal with them all the time and, by and large, they are trying to make these schemes work. The problem is not the people working there, the problem is the statutory schemes the Congress of the United States has set up. They are trying to make them work.

I am not defending the occasional arbitrariness or stupidity that you do run into with people but when you set up this system that is without any regard for the impact on average people, you can't be very surprised when it has this kind of negative effect.

Do you have anything else you want to add?

Dr. WHITESIDE. No, just thank you very much.

Chairman TALENT. Thank you for listening to my little tirade there at the end.

Thank you very much, Dr. Whiteside. That was very informative.

I think we will do panel three before maybe taking a 5-minute break.

This panel is on a subject that may appear to be, at first glance, maybe mundane or maybe even kind of funny but it actually, I think, highlights a lot of the concerns that this hearing is supposed to deal with and it has very important ramifications for sanitation in the United States and health in the United States and it has to do with a Federal law that was part of the Energy Policy Act of 1992 regulating on a nationwide basis the size of toilet.

In 1992, the Congress—and this was not a regulation, by the way; this is a law. The Congress added a law on the floor of the House in the 1992 Energy Policy Act which limited the size of flush toilets to 1.6 gallons. The previous standard toilet had been 3.5 gallons. That currently applies to residential construction; it does not but probably will apply to commercial toilets in the future.

With us this morning to testify about the impact are Richard Redington of the J.E. Redington Plumbing Company—you guys can just come on up now. We have your name tags there so you can sit right behind where—we don't want to misidentify you.

Lee Kent, president of the Missouri Chapter of the National Association of Plumbing, Heating and Cooling Contractors and Richard Church, the president of the Plumbing Manufacturers Institute.

All right, we will start with Mr. Redington.

I want to thank all of you for being here today and taking the time out of your busy schedules. So please go ahead.

## TESTIMONY OF RICHARD REDINGTON ON BEHALF OF J.E. REDINGTON COMPANY

Mr. REDINGTON. With our experience on this 1.6 gallon water-saving toilet, we have found that it is definitely a water-wasting and unsanitary disaster. The poor design and operation of the gravity-operated 1.6——

Chairman TALENT. Tell everybody what you do.

Mr. REDINGTON. I am a plumber. I work with J.E. Redington Plumbing Company here in St. Louis. We do mostly residential, remodeling and repair. Since this 1.6 gallon law came to existence, we have had just a flood of calls on people trying to get somebody who is knowledgeable who would be able to fix all the problems with it. We have basically found that by the design of the toilets, there isn't a whole lot you can do for them, that you really just have to put up with them.

Anyway, the poor design and operation, especially with the gravity-operated 1.6 gallon toilets, should definitely have us contemplate a reversal of the law. I think this law was enacted during a time when California was having a lot of problems with drought and they were making it to where people could no longer fill their swimming pools or water their yards and they basically brought it out as a State regulation or a law to reduce water consumption. They were in quite a different position than the rest of the country normally finds themselves in.

Anyway, with these toilets, they definitely require to be flushed twice in most cases and three or even more flushes, to leave the bowl fairly clean and that, obviously, is going to waste more water than a well-designed 3½ gallon toilet that is going to flush fairly clean just with a single flush. The water surface area on these toilets have been significantly reduced to get 1.6 gallons to flush properly or to try to flush cleanly and that leaves a large area of basically dry china, that catches skid marks and requires the user to take a scrub brush and clean the toilet after each use.

I have some pictures here. The first one basically shows the water area of a 3½ gallon, one-piece toilet and I will try to hold it up. It shows a blue spot because I used dye to help emphasize the water spot area. It shows that most of the bottom of the bowl is actually covered with water and what that does is, as somebody uses it, the water area will actually dissolve any skid marks that are in this area. If it is not cleaned immediately, the next person that flushes the toilet, you will find that the marks in the toilet basically will wash away by themselves without any physical scrubbing.

The next one is——

Chairman TALENT. They flush before using it? That's if they don't clean it?

Mr. REDINGTON. That is if they don't use a brush to clean it with.

What Mr. Talent has referred to is that there is somewhat of a reduction of the amount of marks that are left in the toilet if you do flush it before you use it, which is something that nobody has ever done before. With the gallon-and-a-half toilet, obviously, if you are going to flush it before you use it and then you flush it after you use it, the most you are going to save is .3 of a gallon.

Chairman TALENT. Let me just emphasize this point. When this first came to my attention, and it was from constituents, if you have a new home, you're dealing with this. The idea of this is to save water, right? What happens when you flush your toilet and it doesn't clean the toilet entirely? You flush it again, don't you? So you have people flushing two or three times and you end up spending more—using more water, right?

Mr. REDINGTON. Yes, if you flush it before you use it and then you flush it one time after you use it, you are using the same amount of water as a 3½ gallon toilet with very little inconvenience. Most of the time, you are going to have to take a brush and flush it a third time after you scrub out the bowl, so at that point you are using over 4½ gallons and you are definitely wasting water.

Anyway, on the second picture here, I didn't use any dye and I don't think any of you will be able to see the water at all. That is basically what a normal toilet that most of us are familiar with looks like.

The third picture that I have is a 3½ gallon two-piece toilet which is another one that shows that 95 percent of the bottom of the bowl is covered with water.

Then the next picture I have is Kohler, it is a 1½ gallon. They claim that water spot measures 7 inches by 8 inches but, obviously, with the triangular pattern, it is not a whole lot of a water spot. It probably covers 25 percent of the bottom of the toilet.

Chairman TALENT. On both these, this is what we have right now, right?

Mr. REDINGTON. Yes.

Chairman TALENT. This is what we had before?

Mr. REDINGTON. This is what we had before the regulations and this is what we have after the regulation.

Chairman TALENT. I have decided to do this, notwithstanding the subject matter, because I want everybody to understand. This is the Federal Government, this is a Federal law telling everybody what they have to have in their toilets and it is not working and evidently they didn't anticipate any of this and we did it.

We are going to have witnesses to testify about why this has happened and there is another side to this and you will hear it but I wanted you all to hear it because this thing, this problem, reaches a lot of different areas.

Go ahead.

Mr. REDINGTON. The next picture is basically the same toilet with obviously somebody has used it and right away it leaves marks. It requires cleaning with a brush that you have to physically brush the toilet and scrub the marks and reflush it.

This next one is basically the same as that other one-piece toilet, the 1½ gallon and this is one of American Standard's best. So this is what they did. Kohler was the first one and this is an American Standard gravity flush one-piece toilet.

The next picture here is the same toilet, again, after trying to flush the dye out of it. I don't know if you can see it but there is still a considerable amount of dye left and that was just trying to flush clean water through the toilet. It obviously requires two flushes for any time anybody would use it at all.

The next picture is another picture of that same toilet without the dye in it; that was after the second flush.

The last picture is one of the better gallon-and-a-half toilets. It still shows a considerable amount of china on the bottom. It is still going to require a lot of double and some triple flushing and scrubbing with a brush but this toilet here is probably about as good as toilets are going to get, at least with the gravity design.

Chairman TALENT. One of these pictures shows, and I don't think people can tell, if you do flush these toilets several times, there's almost no water left when the whole process is finished, right, for the next time?

Mr. REDINGTON. Yes. That is basically one of the problems that they had to try to get the toilet to flush on 1.6 gallons, they had to reduce the amount of water that the toilet holds because to get, a surge of water to push the standing water through a trapway, you have to make sure that the surge of water that you are using is going to be a larger volume than is standing in the bowl or you will never get it to transfer. The way the manufacturers have dealt with this is the only way they can and that is to reduce the amount of water that it holds inside the bowl.

I guess we have already touched on the fact that you can flush the toilet before you use it and that will reduce the amount of stains left in the toilet because it will prewet the china surface. I know from talking with different people around that I believe the chemical industry is starting to go full bore on trying to find different toilet additives that would be able to try to add to the tank to make it to where it will coat the inside of the china because they know of this problem from listening to people who got stuck with these toilets. They are trying to do what they can maybe do to help so the Tidy Bowl type of people have started in trying to make some sort of waxy, filmy additive that you will be able to add to your toilet tank and each time you flush it, it will—you would need to flush it before you use it as well as after you use it which is, obviously, again no savings at all in the amount of water consumed, plus it is adding more chemicals for sewer districts to take out later or the sewerage treatment people.

The other thing I find is I have two small children and obviously they don't come running to you to tell you that they used the bathroom. You go into the bathroom and even after you get them to where they do flush when they're done, you go in there and the bowls are just about, the room smells and they have things stuck to them. As a rule, they are not going to grab the brush.

The problem with the bowl water surface area is less of a problem with power flush toilets. Most of the power flush toilets start in the $370 range, just for one toilet and from there they go up into the $1,000 or $1,500 range. They go up pretty steep.

Chairman TALENT. You make a good point that has overall implications. One of the common things you see when you have regulatory problems like this, the more money you have, the easier it is for you to be able to buy your way around it, basically. So if you have enough money, you can buy a toilet that works, notwithstanding, is what you are saying?

Mr. REDINGTON. That is correct. Instead of being able to buy a $75 or $150 toilet, you can go out and buy a $700 or $800 toilet and complain about the price but, at least, you won't have the unsightly, unsanitary toilet that comes with the smaller price tag.

These toilets also, to get them to flush properly, the other thing that manufacturers had to do to them that was a dramatic change was to reduce the size of the water trapway because the other way of getting a toilet to flush better is to reduce the trapway inside the toilet itself, this will make it siphon easier, that it will help

pull the waste through. They glaze the trapway in most cases and they have also reduced the size of it.

The other call that we started getting very shortly after these toilets were introduced is, I have this 3-month-old toilet or this 3-week-old toilet and it is stopped up already. Something must be wrong with it. Customers rarely want to find out that, well, you ended up with a gallon-and-a-half toilet and, this is going to be a common problem that you can either buy the equipment to cable the toilet yourself and remove the stoppages or, get used to calling the plumber on a regular basis when this happens.

I guess it is always something that most people have a panic attack over because you see the toilet, it almost overflows onto the floor. It is obviously something that you don't want to clean up after and it leaves that problem also.

The power flush toilets do have a big drawback in that they are pressure tank operated in most cases. They are complicated and they also have a noise that comes along with them that most people have associated the one-piece toilet with a nice, quiet little toilet that is easy to clean and with the power flush units in there, it usually sounds like the commercial toilets with the chrome flush valves on the wall. Although the noise is a shorter duration in time, it is enough to wake up some people in adjoining bedrooms. The number one upgrade in a toilet prior to this law was to go to a one-piece because it was quieter and the one-piece design is easier to clean. So we have removed the reason that most people upgraded by making these toilets much noisier than the average toilet.

The other place that—we haven't seen a whole lot of problems in it yet. The cabling industry is certain that we are going to have a lot of problems with is that they reduced the standard that these toilets operate by in that they used to flush out 75 or further from the point of where the toilet is installed on a horizontal line. The older toilets flushed further than that. These new toilets are designed to flush solid wastes, which they used plastic balls which float, though most waste isn't so buoyant, would be that these toilets only flush out about 40 feet at best. That makes it to where the older toilets flushed all the way out to where the waste would hit the sewer mains and waste will not sit in your front yard. With the new toilets, the waste sits there and, as we know, if it is allowed to dry, with the way plumbing is designed, it is all vented in different areas, it is going to collect in the front yard and cause more sewer stoppages and other problems with the sewer.

The cabling industry is really gearing up saying that everybody needs to start buying these power flush pieces of equipment which run in the thousands of dollars to try to help clear out sewers when we run into sludge problems which, usually, in the past, a sludge problem was only usually caused by a defect in that there would be a low spot in somebody's sewer that would collect solids. Now it is going to be, that the toilet won't flush out to sewer main so if you don't flush two or three times to help rinse the sewer, it is going to stop up.

Another problem with the power flush toilets recently encountered is where we were called into a situation where two toilets that were set up with a back to back piping arrangement, which

is a very common plumbing arrangement where you run one main stack pipe and you branch off in two different directions and you have basically two toilets that are—that are right across from each other through a wall. You see it a lot where the master bath backs up the hall bath, toilet to toilet so they didn't have to run two stacks all the way up to the toilets.

In some cases, you can get one power flush toilet to blow all of the water out of the other toilet into the middle of the room. So even if you have the money to afford the better power flush toilet, you have to possibly replumb the house to have piping configuration that is going to allow you to use the toilets.

We asked the manufacturers and we do have somebody here from the Manufacturers Association. Most of the reps basically come out and obviously, from the pictures, they say that, gosh, ours is better than most of the others, ours usually will clear, clear water and has a better size water spot than most of them, so, we are not the bad guys; we are trying to follow this water conservation law as good as we can.

Like I said, we do a lot of service work. Most of these toilets, when we get calls for them, the complaints people have with them not cleaning and being unsanitary is a call or a complaint that is on a perfectly well operating toilet that nothing is really defective with the way the mechanism or the toilet itself is flushing. That is just as good as it is going to be.

From the service point, we do feel like we have had the wrath of the customer on us. We get calls from people who are very upset after spending a lot of money for different things and most of the time they don't really even compare just what the cost of the toilet is. A lot of times you get the customer calling up and saying, I spent X amount of dollars remodeling this bathroom and it is disgusting. We don't even use it anymore, we have the kids go into the master bath and, if I would have had any idea, I would have had them save the other toilet and we would have used colors that would have worked with it, even though that wouldn't be their choice.

All in all, this has been something that most people do complain about and we get a lot of calls with people frustrated with this law and the best we can do at times is to tell them to write their Congress people and to write whoever they know who might have some influence to try to get it changed because it wasn't really a regulation that was meant for the majority of the country in the first place.

Chairman TALENT. Thank you for that testimony.

We will go now to Lee Kent. He is the president of the Missouri Chapter of the National Association of Plumbing, Heating and Cooling Contractors. Lee, I hope you will especially go into the background regarding the testing that was or wasn't done on this. In addition, if you want to emphasize some of the points that Rick has already made, please go ahead.

## TESTIMONY OF LEE KENT, PRESIDENT, MISSOURI CHAPTER, NATIONAL ASSOCIATION OF PLUMBING, HEATING AND COOLING CONTRACTORS

Mr. KENT. Thank you, Congressman.

I will start off with our statement from our association. The National Energy Act, H.R. 776, which took effect January 1, 1994, set flow rates of 1.6 gallons per flush for residential toilets, 1 gallon per flush for urinals, 2½ gallons per minute for both residential and commercial showerheads and faucets. Commercial gravity-type toilets using 3½ gallons per flush are permitted until 1997, after which time the standard goes to 1.6 gallons per flush.

One of the concerns of the Missouri Association of Plumbing, Heating and Cooling Contractors has with the 1.6 gallon water closet is the testing method utilized by the agency. Testing of low flush water closets was performed with different sizes of plastic pellets designed to emulate solid waste. These were set by standards set by ANSI. A percentage of pellets had to clear the bowl and travel 40 feet downstream after a 1.6 gallon flush. However, as you know, plastic pellets are in no way analogous to waste solids that are flushed down the toilet.

In addition, the study has not considered the effects of solids left in the sanitary drain system due to the reduced water flow. In a system with a flow greater than a quarter inch per foot and/or long, horizontal runs, deposited wastes are left by the increased velocity of the waste water which will cause stoppages in the waste line.

We feel that the 1.6 gallon per flush toilet provision was prematurely adopted and could have been better served by the revision in the plumbing code design to meet the conditions of various type of low-flush water closets.

Chairman TALENT. Let me emphasize that. Rick referred to it also. That even if it gets waste out of the toilet, it may not flush it far enough down the line to clear the line, which means you can get stoppages there.

Mr. KENT. The original energy calculations on a sanitary sewer is based on a third flow design of the pipe and you are having a volume of water that helps carry this here downstream. Once you flush the toilet, it gets it down 40 feet. When you have this here volume of water which helps carry this waste to the sanitary sewer. Now, with this reduced flow, you are not getting that volume of water to help transpose this waste down the waste line.

Chairman TALENT. Thank you.

Go ahead.

Mr. KENT. Commercially, the 1.6 gallon per flush toilets are subject to even harsher condition than the residential low-flush toilets. These low-flush toilets must endure disposal of paper towels, feminine napkins and a myriad of other items not typically disposed of in residential low-flush toilets. Additionally, the legislation has not given the plumbing industry sufficient time to educate the general public on the proper use of these fixtures.

Also, I don't believe the industry was given enough time to implement the design of these fixtures when the law went into effect. I believe they put the cart before the horse on this regulation.

Contractors within our industry have voiced numerous complaints from their customers. Some of these complaints are multiple flushes of toilets are required to clear the toilet bowl. A majority of these associate with gravity toilets as opposed to the pressure tank type toilets.

Multiple flushes effectively defeat the purpose for which the low-flush toilets were designed: Water conservation and waste water treatment.

Waste, commonly referred to as skid marks, is left on the bowl as a result of the smaller water spot.

In conclusion, the Missouri Association of Plumbing, Heating and Cooling Contractors supports the National Energy Act, H.R. 776, except for the implementation of the commercial 1.6 gallon flush toilets which becomes effective January 1997. The Missouri Association of Plumbing, Heating and Cooling Contractors believe that the use of commercial 1.6 gallon flush toilets would have an adverse impact on the water conservation and feels that the general public would be better served by use of the 3.5 gallon flush toilet.

Chairman TALENT. Thank you very much, Lee.

Our final witness on this panel is Mr. Richard Church, the president of the Plumbing Manufacturers Institute in Chicago, Illinois.

Mr. Church, I really do want to thank you for coming in for this hearing. You came in from out of town and I am grateful to you and your testimony, I think, is going to clear up a lot of the background of how this got adopted.

Please go ahead.

## TESTIMONY OF RICHARD CHURCH, PRESIDENT, PLUMBING MANUFACTURERS INSTITUTE

Mr. CHURCH. Thank you, Mr. Chairman, for the opportunity to testify today. At least I think thank you. I view this with some trepidation.

I represent the folks who make the products that we have been talking about. PMI is a trade association whose members make most of the plumbing fixtures and fittings that are made and sold in the United States. I am normally—I am a little uncomfortable with this role because I am normally on the other side. I am usually griping about what Government has done and in this case I am going to defend, to some extent at least, what has gone on with respect to EPAC 1992.

A little history is necessary, I think, to show how we happened to get into this situation. For a number of years, literally years, our industry resisted any Federal role in this particular issue. There were—our industry made a number of points relative to that to those who were interested in having a Federal role. The first one of which was that plumbing products, and building products generally, as a matter of fact, are normally regulated by State and local building codes and other types of regulations and by consensus product standards which are developed by the industry and other interested parties.

The Federal requirement that was discussed from the beginning was for water consumption or water use only. There was no provision ever even discussed except by us that if there were going to be a Federal requirement perhaps there ought to be other criteria that the products met, just as they have to do at the local and State regulatory level.

We suggested that the lower flow of sewerage, particularly in older plumbing systems and drainage systems would have to be a problem later on as the buildup, which these gentleman have

talked about, began to occur. We also felt, from a manufacturer's standpoint, that the market, the marketplace would drive the change to 1.6 gallon water closets that consumers and others would make that determination themselves as the products became better over time, as the technology was better.

Three things happened in 1992 to change our industry's mind about how to deal with this so we, in fact, ended up supporting the Federal requirements. The first one was that at that point in time something on the order of 75 to 80 percent of the U.S. population was already being covered by State or local codes and regulations that required the 1.6 gallon water closets. Not the geographic area of the United States but the population area.

Worse than that, there was a fairly substantial variance in some of these State and local requirements. If there is one thing that manufacturers have a tough time with when they market, at least nationally and perhaps internationally, it is making one type of product efficiently for New York and another product for Missouri and another product for California.

Chairman TALENT. Let me ask you about the because I am very sympathetic to that and, in fact, I think through the classic and anticipated role of Congress to remove burdens on interstate commerce by trying to override State and local regulations that made no sense and that may be difficult, it is not immediately apparent to me, though, why it is difficult to produce and market different size water closets or toilets.

In other words, all the law did was preempt that one area, or did it go further than that?

Mr. CHURCH. Well, what the law ended up saying was that the products had to meet the requirements of the American national standard that were applicable and as it changes over the years. That happened to be a maximum flush or an average flush in test condition of 1.6 gallons but some localities were adopting 1½ gallon flushes and then adding some other little caveats on. So we had pretty much a mess with respect to being able to meet all regulatory requirements efficiently.

Chairman TALENT. So this came to a single code that you could follow?

Mr. CHURCH. That is correct.

Chairman TALENT. To make it easier for you in terms of the market.

Mr. CHURCH. That is correct. Frankly, the problem was varying regulations at the State and local level was more prevalent with faucets and showerheads with flow rates than it was with water closets and urinals. So the first thing that changed our mind was the variance in local requirements but the general population of the United States already being covered by some form of water conservation requirement.

The negotiators we were working with on the other side, if you will, of the issue finally met our industry's insistence that the Federal requirements would rely on the American national standards which already existed for the products as the way to benchmark the criteria that they had to meet and that State regulations would be preempted, State and local regulations would be preempted.

Having met those two criteria, our industry decided to go ahead and support placing these products within the Energy Policy Conservation Act of 1992. In addition to that, though, industry's feeling, manufacturing industry's feeling was that the 1.6 gallon water closets were getting better. We had some experience with them, there were already localities that were asking or mandating that they be used and we felt that they were getting better.

The consequence was that the law was enacted and signed. It is interesting to note that the two major sponsors, both in the House and the Senate, were defeated in 1992. I am not sure what this had to do with it but they are no longer there.

Chairman TALENT. I'm not getting involved in that.

Mr. CHURCH. One of the things I did, and I readily admit this was done on an unscientific basis, we called fixture manufacturers prior to coming here and tried to just get a sense from them of what kind of complaints and feedback that they are starting to get from the public and their consensus was that they are not getting any more complaints and unusual problems feeding back than they would expect with any new product. That may be contrary to what our plumber friends are saying to us, but that is the perception, at least, of what the manufacturers are hearing.

I do want to stipulate that a number of things that these gentleman have said about the water closets are probably true. It is a point—it is a point of contention. One of the things that was discussed early on in the debate is, well, Europe does this so why can't we and save the water. The attitude about their use is somewhat different in Europe and apparently our attitude needs some education and adjustment as well.

There is another piece of this that I should mention. Imports of water closets have grown substantially since the act was passed. There are about 10 million toilets sold in the United States every year. That varies based on the economy and housing starts and one thing and another, but there are about 10 million. In 1995, it appears that something over 3 million of those will be imports, which is an increase of imports of 133 percent since 1992.

Now, I don't want to suggest to you that water closets, because they are coming in from overseas, are necessarily a bad product. We don't know that. There is a good reason why no one knows that, which I will explain in a minute.

We do know that a number of the products fall into lower price categories and go to retail outlets. Retail outlets are an interesting phenomenon because, typically, local and State building code regulations don't necessarily apply to products that are sold at retail unless one of these gentleman happens to install it under a building permit and then the product has to meet local requirements.

They would be covered by the Federal law, at least with respect to their water consumption, except that DOE, who is responsible for writing the rules, the regulatory rules about this matter, is about 2 years late in doing so and, consequently, the Customs Service can't enforce the law.

Again, I want to make the point that I am not suggesting that water closets that are made outside this country are no good. They may be excellent products, they may meet all the requirements of

both the local code and the Federal law. The fact of the matter is, we don't know that.

In closing, unless you have questions, I would simply say that industry manufacturers generally believe that the 1.6 gallon water closets are viable products now and into the future. They do conserve enormous amounts of water in most cases, which helps decrease an already overburdened water delivery and treatment infrastructure, which is really why you do that in the first place. The Federal law, its execution and manufacturers products aren't perfect. The manufacturers products at least, I think, have improved and continue to do so. We feel that the Federal requirement is good public policy but we would urge Congress to continue its interest in the important subject of water conservation and in the execution of the Federal Government's role under the law.

Thank you.

Chairman TALENT. Again, I appreciate very much your being here and obviously you don't have to comment from this but I understand the position of a trade association that is under considerable pressure and makes the best arrangement that it can make and what tends to happen, unfortunately, Rick's testimony or statement refers to this although he didn't say it in his oral testimony is that you get certain interests protected and then if the consumers are not organized and represented, their interests may or may not be protected in the course of it.

If I understand the position that you were in, had there been any—you mentioned your survey was unscientific and it is certainly not consistent with what I have been hearing and what I have been hearing with people who are dealing in this on a day-to-day basis. Has there been any scientific surveys of consumer satisfaction or dissatisfaction with this of which you are aware?

Mr. CHURCH. Not really satisfaction. Consumer Reports had done a survey that was really more to test the water closets than to measure consumer satisfaction.

I think one of the problems with doing that is that the products truly have changed over the 3 or 4 years they have been available. See they have really been available, let's say, a good demarcation time is 1990, before the act was signed. So the products, the 1.6 gallon flush products, have been in the marketplace and they have been used. I have them in my house; I don't have a problem with them.

Chairman TALENT. You say that enormous amounts of water have been saved. I take it there is reliable data to that effect and I would like to get that.

Mr. CHURCH. There are some studies that have metered and measured over time. They are, I would have to look up the citations for you, I think I could find them.

Chairman TALENT. Because I want to look at the methodology of that and we will go into it, because if this occurred at the same time as other changes, of course, it is hard to tell whether it is traceable to this or whether it would be traceable to something else.

Mr. CHURCH. There is some data, there is some data.

Chairman TALENT. I would like to try and track that down if I could.

Mr. CHURCH. OK.

Chairman TALENT. You mentioned the over-stressed water treatment systems and, of course, the question of why they are over-stressed is another issue. The point I want to make to you is they are not over-stressed every place. I mean, it seems to me to me this is a classic example of the fact that, they have droughts in California and maybe they need to do something, assuming it does save water.

I can take you to places in this area where water shortage is not the problem. In fact, if you had come in May, I understand there was a lot of flooding here. But there a lot of places where this is just not that great a difficulty and there has got to be some way, which I don't think you would disagree with, where we could protect against variations that—in local regulations that put an unreasonable burden on national commerce without forcing everybody into this straitjacket.

Assuming three-quarters of the people do use it, that means there are vast areas of the country where it isn't and where it may not be—where it may not be a good thing to do.

Mr. CHURCH. With respect to water closets, prior to the Federal law, the ANSI standard didn't specify how much water was to be used, it provided other performance criteria. These gentleman outlined some of it for you. But it basically said if the water closet is in the 3½ category, here is what it is supposed to do, if it is in the 1.6 category, here is what it is supposed to do. It didn't tell you how—it basically had three different levels of water use with other performance criteria relating to it.

Chairman TALENT. Because I would think that, all things being equal, there is no reason why consumers would not want to use more efficient water closets in terms of the amount of water. So just the market alone would probably take care of it.

Do you all have anything to add?

If not, I will close this panel and I promised everybody a break. I think now would be a good time you could use the local water closets if you want and let's just say we come back—we are right on time, we are doing very well, so we will come back, say, in 10 minutes about 11:15.

Thank you all again.

[Recess.]

Chairman TALENT. I want to stay on time. We have three more panels.

We have three witnesses for the fourth panel. The first witness, actually we are not going to go in this order but I will introduce them in this order, one witness is Mr. Scott Harding. He is a certified professional soil scientist and heads SCI Engineering and Materials Testing, Incorporated. Mr. Harding's Company provides consulting services to residential land development businesses in the greater St. Louis area.

We also have with us Mr. Brad Goss of Whittaker Construction located in St. Charles. Mr. Goss and I had an interesting conversation on the subject he is going to testify about today in my office last year. Whittaker Construction is one of the largest homebuilders in the United States.

We also have Mr. Dennis Hayden of the Hayden Company located here in St. Louis. The Hayden Company is one of the largest homebuilders in St. Louis.

Our witnesses on panel four are with us today to discuss their concerns with the effects of wetlands regulations and how it has affected the housing industry and I want to thank all of you for being here. We are going to go a little bit out of order because of some time constraints for some of the witnesses and go with Mr. Hayden first.

## TESTIMONY OF DENNIS HAYDEN ON BEHALF OF THE HAYDEN COMPANY

Mr. HAYDEN. Thank you, Congressman Talent. I appreciate the opportunity to testify today.

I am Dennis Hayden of the Hayden Company. I am a homebuilder and work hard to build quality homes at a fair price and in compliance with all Government regulations. There are many such regulations but I wanted to point out one regulation and how it applied to my company unfairly and harshly.

I am a homebuilder but, for 6 months, I was required to be an archaeologist. For 6 months, I was required to underwrite the cost of a college professor and a group of students digging up a site I was developing for residential homes. The college project cost my company $130,000. The survey caused a 6-month construction delay for which I received no compensation or benefit.

I needed a 404 permit to build a detention basin and a utility crossing——

Chairman TALENT. A 404 permit is a wetlands——

Mr. HAYDEN. That is a permit to work in the wetlands from the Corps of Engineers. This work was to be done in what had been delineated as a portion of a wetlands area. I needed a permit that eventually did cost $10,000 in consulting fees and took 12 weeks to obtain from the Corps of Engineers.

I was issued the wetlands permit, however a condition of the permit was that I would agree to certain conditions that have absolutely nothing to do with wetlands. I had to agree that if I learned that any aspect of my property, not just the wetlands area, affected an historic property, I had certain obligations. First, I had to notify the Corps of Engineers. Second, I was required to halt all work on the project and, third, I was required to take certain steps at my cost to satisfy public concerns before I could continue to do the work.

These requirements are set forth at 33 Code of Federal Regulations, Section 330.4(g).

In this case, I was contacted by the State historic preservation officer who indicated that they thought an Indian village site was located on the ground that I was developing. This triggered my obligations under the permit that required me to notify the Corps of Engineers and halt all work until I could sort out how I could mitigate the potential harm to the historical site. What this actually meant was I had to hire an archaeologist to investigate the site and prepare a plan to mitigate the potential harm by discovering potential artifacts.

The archaeologist developed a plan and after State and Federal review, he and his class of students then spent 6 months at a cost to me of $130,000 locating arrowheads and other artifacts that the world was able to live without until I started to develop my project.

As a responsible businessman I, too, have an interest in historical findings. However, what was particularly scary was that the archaeologist had total, unlimited control. Under regulations, the college professor was able to decide to what extent work needed to be done at my cost without any ability on my part to oversee his work or control his use of my checkbook. Not until the archaeologist reported that he had satisfied his own interests could I then get clearance to commence my project.

I believe it is unfair to require a private citizen or company to underwrite the cost of this public project. I resent being subject to the whims and caprice of an archaeologist who is not elected or appointed as a public official. I suspect that if the taxpayers were required to shell out $130,000 to dig up this Indian village site, there would be a revolt and the taxpayers would not be willing to pay.

I do not believe that the Government should be able to shift the cost of these public projects to a single private company or individual when the public itself would be unwilling to pay for the cost of this proposed public benefit.

My story is one small example of hundreds of cases of vague, questionable regulations occurring every day in our industry, adding thousands of dollars to the cost of new homes. Six months may not appear to be a long time, however to a builder, 6 months is additional interest expense, loss of opportunity, loss of favorable productive weather conditions, and the loss of hundreds of jobs for construction workers.

The cumulative effect of the cost of these delays along with the hard cost of the permits and the archaeological study is one reason why the U.S. Census Bureau reports that 57 percent of Americans cannot afford a median-priced home in this country.

Chairman TALENT. Thank you, Dennis.

I want to ask you a couple of questions before we go to the next witness, who I think will be Mr. Harding.

Mr. HAYDEN. Sure.

Chairman TALENT. Your testimony reminds me that we need you to outline the basic scheme here before we go into this so people understand about wetlands regulations before we go to the specific instance that Brad is going to talk about.

I think really, apart from the unfairness to you which, I agree with, in essence you are being required privately to finance a public kind of operation. The point you made is simply not made enough to people: The effect of the regulatory burden on the cost of homes and the affordability of homes to the average American.

You mentioned just one small example of hundreds of cases that cost thousands of dollars. I remember the impact of the spotted owl regulations on the price of lumber and was told at the time that it increased the cost of the average home in the country by about $2,000. Is that about your recollection?

Mr. HAYDEN. Yes, that's correct.

Chairman TALENT. So what we do is we price average Americans out of it. Home ownership becomes more and more the province of the wealthy.

Mr. HAYDEN. Exactly.

Chairman TALENT. Is there some breakdown you have or the association might have, it would be very useful to me, even at a snapshot in time, at this time this is how many thousands of dollars we think these regulations are adding to the cost of a home, this regulation, this one, this one, this one.

Mr. HAYDEN. I think we would be able to provide that for you.

Chairman TALENT. That would be very useful for me, just so people can understand that this—I mean, it is not just you big developers who now have to pay through the nose. I mean, the fact of the matter is it affects the availability of the American dream for a lot of people.

Mr. HAYDEN. That is correct.

Chairman TALENT. I appreciate your testimony and your being here.

Mr. Harding, you want to go next, please?

Mr. HARDING. Certainly.

## TESTIMONY OF SCOTT HARDING ON BEHALF OF SCI ENGINEERING AND MATERIALS TESTING

Mr. HARDING. I am a wetlands project manager for a consulting company. My company provides consulting services to many clients looking to develop land into residential subdivisions. Often, these clients are unaware of all the Federal regulations that govern development on their proposed sites. Most developers know that wetlands are federally regulated. However, few realize additional areas in their subdivisions are regulated.

Wetlands are a subset of waters of the United States. The term, "waters of the U.S." has a broad meaning and is regulated under Section 404 of the Clean Water Act. Section 404 authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits for the discharge of dredging or fill material into waters of the United States.

The Section 404 permit program is intended to restore and maintain the chemical, physical and biological integrity of the Nation's waters. There are several examples of waters of the United States in Section 328.3 of the Code of Federal Regulations. It includes such terms as "interstate waters," "wetlands," "lakes," "rivers," and "streams." One can imagine that these water bodies might be involved with interstate commerce. However, the definition of waters of the United States also include intermittent streams and tributaries to these waters. It is these terms that have not been defined or quantified in the regulations.

The St. Louis district of the U.S. Army Corps of Engineers interprets a tributary or intermittent stream to be any defined channel. This is with or without the presence of water.

I have two photos I would like to show you. One is a good example of waters of the United States that is regulated and it does show up as a blue line on a USGS—which is the U.S. Geological Survey—topographic maps. It is easily identified, off site as a regulatory water body.

The second photo is also included as part of the definition of waters of the United States and, as you can see, it is much more minor and I will show these photos again a little bit into my testimony. This is 12 inches deep, it is probably in every, tract of land a developer wants to put in a subdivision and we've got Government regulation governing what gets happened to these, really, ditches.

This loose interpretation of waters of the United States and what is an intermittent stream, can lead to regulating a 10 inch erosional channel as waters of the United States. By using such a broad definition, almost every farm field, pasture or acre of woods has some area regulated by the Federal Government. This is causing an excessive number of permit applications by subdivision developers impacting these minor drainage ways. The limited resources of the Government would be better directed toward activities with greater potential for adverse effects on the aquatic environment.

Chairman TALENT. Let me just ask a couple of questions just to emphasize this and get it fixed in everybody's mind.

Congress, of course, has the power to regulate navigable waters and the Clean Water Act was concerned with protecting the integrity and the quality of the navigable waters in the United States, basically; isn't that correct?

Mr. HARDING. That's right. To stop pollution of those waters.

Chairman TALENT. By the way, this hearing is on a lot of regulations that haven't worked. The Clean Water Act has had some very notable successes, particularly in regulating point sources, but I am not going to get into that right now.

The problem was that Congress didn't define what was a "water of the United States."

Mr. HARDING. In adequate terms.

Chairman TALENT. That's right. So regulators have defined as waters of the United States areas that have nothing to do with navigable waters or even, sometimes, water.

Mr. HARDING. Absolutely. A lot of these channels that cut through, these developers' sites rarely have water and they probably only have water in them after storm water events, which may be several days out of a whole season or even a year.

Chairman TALENT. A couple of other points, you folks and the Corps of Engineers and others here as well, I think it is in the defense of the Corps to say that they are the most reasonable of the regulators to deal with on this. I mean, a point you will make is Congress has not provided clear authority for any one agency to deal with and the Corps is probably the best of all the agencies to deal with.

Mr. HARDING. It has been my experience that that is the case.

Chairman TALENT. The other point is here we are talking about developers, because this is a group which has the resources to develop and present—make presentations like this. But, I mean, you can talk to anybody, farmers for example, who have been very adversely affected by this. In essence, it turns the Federal Government into land use regulators in these areas.

Mr. HARDING. Right. In many cases, it will shut down a development and not allow it to be developed if so much of the site is found to be regulated by the Government.

Chairman TALENT. Isn't one of the agencies defining a wetland as land that has standing water, like 7 days out of the year? Isn't that EPA's definition?

Mr. HARDING. Well, yes, that is part of the grouped definition that a lot of the regulatory agencies are using. It is really 5 percent of the growing season which, in St. Charles County, Missouri, works out to be about 11 days of the year.

Chairman TALENT. My backyard would be a wetland then.

Chairman TALENT. Go ahead.

Mr. HARDING. Congress needs to set a standard which the public can adequately recognize as a jurisdictional water body. The U.S. Geological Survey publishes topographic maps which indicate intermittent tributaries as dashed blue lines. Perhaps this could be used as the minimum standard for jurisdictional tributaries to waters of the United States. Any activity proposed upstream of this dashed blue line would be considered a storm water issue and might require regulation on a local level.

The proposed legislation should also define the hydrologic period or time required for water to be present in waters of the United States which is a little bit different than wetlands which Congressman Talent just mentioned. Examples of areas that aren't meant to be regulated ought to be incorporated into these definitions and regulations.

It also seems logical to consolidate and have one agency be in charge of writing and enforcing regulations. Currently, the Environmental Protection Agency writes the policy and guidelines and the Corps enforces them. For areas on agricultural land, the Natural Resource Conservation Service is the lead agency for delineations and determinations of wetlands. The applicant and/or developer must now submit the delineation to the NRCS, the Natural Resource Conservation Service, and wait up to 45 days to get a response on the delineation. He then has to resubmit an application with that delineation to the Corps of Engineers. Depending on the particular case, he may involve four, five, or six other regulatory agencies to review that permit application.

If an applicant only needed to work with one governmental agency, it would reduce regulatory delays and costs for everyone involved. Another suggested improvement would be automatic issuance of permits if a regulatory agency has not responded within a reasonable timeframe.

There also needs to be an administrative appeals process. Problems arise due to differences in interpretation of regulations. The Federal Government should regulate true navigable waters and the wetlands that are contiguous to these waters. However, other isolated waters and wetlands should be regulated on a State or local level, since their impact on interstate commerce is minimal at best.

In summary, several problems are recognized. Not enough emphasis has been put on the fact that waters of the United States including wetlands and many other water bodies are under Federal regulation. A complete definition including recognizable criteria such as a dashed blue line on the USGS topo map needs to be writ-

ten into the regulations. Greater public awareness of any new regulations can be achieved by information channeled through the National Association of Home Builders.

Too many governmental agencies acting independently are involved with the legislative, administrative and enforceable side of Federal regulation. One agency with a multidisciplinary staff needs to provide the public with timely response to permit applications.

Many of the regulations and terms are open to personal interpretation or misinterpretation. An administrative appeals process could be established for those applicants who want to challenge a decision. Perhaps supervision of staff on a national level might ensure more uniform treatment of applicants.

There again, just to reemphasize, this is the example that would show up on a USGS topo map that we can identify, a developer can identify and say, hey, look, I've got some areas out there that are under regulation by the Corps of Engineers. We need to either avoid them or apply for a permit to impact these areas. Frequently, these developers don't know that these, the tributaries, are under regulation.

Especially when you have these on your site, which are literally on every site, the developers are caught impacting these without applying for permits and then the Corps of Engineers possibly putting a cease and desist on the construction aspect of their development because they haven't applied to impact a 12 inch erosional channel and site.

Chairman TALENT. Thank you, Scott, and I don't know if you have had a chance to look at the Clean Water Amendments that the House has passed but it contains all the reforms you mention. Classifying wetlands in an attempt to realistically define them as areas which are important to the ecosystems of navigable waters, which is the original intent to allow—remove Federal regulatory presence in other areas that nobody understands to be wetlands under a reasonable definition and have a single agency enforcing and also an administrative appeal process.

I believe very strongly that we are going to end up with better regulation of true wetlands for the reasons you mention and then we will be able to concentrate resources on those areas and protect that better and then other people are going to be free, as typically they have been in the past, to develop in other areas, subject to storm water and all the other regulations you mentioned.

The next witness. Brad Goss of Whittaker Construction.

## TESTIMONY OF BRAD GOSS ON BEHALF OF WHITTAKER CONSTRUCTION

Mr. GOSS. Thank you, Congressman.

My name is Brad Goss and I am an attorney appearing before you today on behalf of the Homebuilders Association of Greater St. Louis. I have over 15 years' experience in the real estate industry and in particular in the development of single-family residential subdivisions. This is an industry that in 1993 alone created 5,427 jobs in St. Charles County alone and generated $87,075,000 in total taxes for wages, property taxes, sales taxes and other taxes for St. Charles County. It is a significant economic engine and it faces a

real threat from the types of wetlands regulation that we are discussing today.

When I began my real estate practice 15 years ago, I did not think I was going to become an environmental lawyer. I could not have been more wrong. Environmental regulation by the Federal Government has enormous impact on the residential homebuilding industry and this impact has only accelerated in recent years. In particular, the impact of wetlands regulation has been tremendous, so much so that my entire orientation with which I approach a transaction has changed. I now begin my analysis of any parcel of land with an investigation for wetlands and, time permitting, I attempt to clear all 404 problems before I undertake any other regulatory reviews, regardless of the size of any possible wetlands affecting the site, whether they are the type of wetlands that you would classically consider a wetland or the type of ravine that Scott was showing might be on the site.

Now, to better understand the significance of wetlands regulation on the homebuilding industry, I think it is helpful to understand how property is actually acquired and developed. Typically, a developer submits a purchase agreement to a property owner which gives a developer a specified period of time in which to satisfy various contingencies in the contract. These contingencies traditionally relate to items that the developer must obtain in order to be able to develop the property, such as appropriate zoning for the property, subdivision approval by the local municipality and various forms of local, State and Federal permits.

Prior to the current wetlands regulations, this permitting process for residential development only involved local and State government and, typically, you could complete the entire process within 4 to 6 months, which was also fortunate because that was about as much time as a seller would give you to satisfy those contingencies.

Wetlands regulation has entirely changed this picture. Unlike the State permits for storm water runoff and certain infrastructure permits, the 404 permitting process is extremely disruptive to the local zoning and subdivision process and I have some case studies that I will go into later that will illustrate that.

First, the timeframes for obtaining approval from the U.S. Army Corps of Engineers do not fit within the normal time period a developer may be given by a seller for satisfying contingencies. The granting of a nationwide permit typically is going to take at least 3 months. It is going to take you a minimum of 45 days to have your environmental engineers, such as Scott, analyze the property and do a wetlands analysis and then it will take at least another 45 days to obtain the Corps' approval. Only after you have obtained approval from the Corps of Engineers can you safely begin your other rezoning and subdivision process, a process itself that takes 4 to 6 months.

Now, assuming the developer doesn't have the luxury of that kind of time and has to proceed simultaneously on the Federal and local level, he is doing so at his own risk because if the Corps decides that a wetland impact should be avoided, then the development plan must be changed, regardless of the feelings of the local municipality who may have to deal with that changed development.

For example, the local municipality may take the view that a livestock pond that is on the site should be eliminated because it is a mosquito-ridden health hazard when it is located next to a single-family subdivision; whereas, the Corps may determine that the pond is a jurisdictional wetland and therefore has to be preserved.

Now, in the context of this conflict between regulatory agencies, the Federal Government is going to win. The risk for the developer who proceeds simultaneously with local and Federal approvals is that the developer is going to have to go back through the entire local regulatory process again once the Corps has vetoed his project.

Part of the problem lies in the breadth and vagueness of the current wetlands legislation. Scott has addressed the regulations already and therefore I won't go into them in any detail. But you do have problems in terms of the definitions of waters of the United States. The definition is extremely broad and it extends to items that you would never think of being waters at all because, in fact, when you go out onto the field that qualifies as a wetland, it may not be wet. It simply has to be wet within a certain distance from the surface for a certain period of time and suddenly it becomes a wetland.

Chairman TALENT. Brad, are these areas all at least near rivers or can they be not necessarily?

Mr. GOSS. No, not at all. They can be isolated waters and, in fact, the Corps has asserted jurisdiction over isolated farm ponds, manmade farm ponds. I don't read the definition in the statute that way. It has been the subject of litigation and it is unclear. The courts are split on that.

The Corps claims that because migratory waterfowl may land in that farm pond that they have jurisdiction and they assert jurisdiction over the farm ponds.

Chairman TALENT. I am just going to ask, is there some presence of some species or something that triggers it? Is it just the water that makes—in fact, there is not even water there all the time?

Mr. GOSS. Not necessarily, no. If you have a certain amount of water within a certain distance of the surface of the soil for a certain period of time, I think it's like 14 days, is that correct, Scott?

Mr. HARDING. Yes, it is somewhere around between 7 and 14 days and that depth to water is probably about 12 inches.

Chairman TALENT. To be clear to people, this isn't a case where maybe there is some endangered species; that is an entirely separate kind of thing?

Mr. GOSS. Absolutely. We are not discussing endangered species in this case. That is another condition of the permit process that has hung up individuals like Dennis Hayden.

Chairman TALENT. So you would be concerned if you had an area of tract you were going to develop and there was anything like low points, even if you went out there it was dry? Is that the sort of thing that triggers alarm bells in your mind?

Mr. GOSS. Well, actually just developing triggers alarm bells now. As I said, I don't buy a piece of ground without having Scott's Company go out and look at it because you can't tell. You can go out onto a piece of property and there is just no way of knowing whether there is a wetland there or not because there is nothing

to your eye—I mean, when people think of wetlands, they typically think of cattails and the blackbirds and endangered species——

Chairman TALENT. Everglades, yes.

Mr. GOSS. Everglades and all that. It is not that kind of condition at all. So the safest course is to have a professional who has got a degree who can go out and do the soils analysis and the hydrology analysis and analysis of vegetation to identify for you whether, in fact, it would be classified as a wetland under these somewhat broad criteria.

Chairman TALENT. Is this a classic example of a regulation that sounds like a legitimate exercise of Federal power? I mean, the protection of navigable rivers combined with the need to protect the environment. I mean, if done appropriately it is quite proper and necessary. The Everglades, the deltas, I mean these are areas that rivers wash out through and flow into oceans for example. Here it is a case of excess resulting, in the first instance, because the statute when Congress did this, it didn't do even the rudimentarily important things like defining its terms appropriately and it hasn't acted since it created the problem.

Mr. GOSS. I think that is very correct. The Corps, in fact, has asserted jurisdiction over grading activities because they claim that your normal grading of a site is dredging because when the grader comes through and lifts the dirt up, it is redeposited back onto the ground and that becomes dredging. Now, that is to me a very expansive definition of the idea of dredging. I had always thought that dredging involved going into a harbor and digging something up and pulling dirt out and depositing it somewhere. That is not, in fact, the way that is interpreted and that is one way the Corps has expanded its jurisdiction under the 404 Program.

Chairman TALENT. Dennis, I will switch back to you for a second on what we talked about earlier. It seems to me the cost imposed onto you by these regulations are pretty much constant regardless of the kind of development you are making. In other words, it is a certain cost for the permitting and for the dredging, et cetera. So that if you have a home that is relatively low cost in value, it is a greater percentage of that home.

Mr. HAYDEN. Of the home price. That's right.

Chairman TALENT. Which means that it has a disproportionate impact on your ability to develop lower cost housing?

Mr. HAYDEN. That's correct. The market perceives value in the price of the home and we have some ratios that we use in the St. Louis area where the lot price can be a certain percentage of the cost of the entire product on the lot and if the regulations force the development cost up and up and up, it forces you to have to raise the price of the house in order to keep those ratios valid, otherwise the people will not perceive the value. They don't want to buy a cheep house on an expensive lot and pay a real high price, so you've got to give them the value in the house. So it just forces costs up and makes housing unaffordable.

Chairman TALENT. When people talk about the shortage of lower income housing or middle income housing, these regulations have a particular serious impact.

Mr. HAYDEN. A major impact on it.

Chairman TALENT. Thank you. Brad, please go ahead.

Mr. GOSS. In an effort to try and mitigate the hardship of the wetlands regulations, the regulations provide for two types of permits. There is a permit called a general or nationwide permit and then there is another permit called an individual permit. The general or nationwide permits are supposed to cover permits that in theory have a minimal impact on wetlands. There are approximately 40 different types of general nationwide permits and those are to permit activities such as road crossings or installation of utility structures or temporary construction, access to utility lines and bedding.

Now, one of the most significant nationwide permits for developers is a permit called Nationwide 26, which permits filling of less than 1 acre of wetlands without notice to the Corps of Engineers and filling of less than 10 acres of wetlands following notice to the Corps. Now, having heard of this nationwide permit, you would think, well, this shouldn't be a problem because with projects having a minimal impact on wetlands, you are not having to go through these regulatory hoops.

Unfortunately, that is not the case because the Corps has taken the position along with the EPA that Nationwide 26 may not be used by a developer unless the developer can first demonstrate that the impact on the wetlands could not be avoided. It is not sufficient for the developer to come into the Corps of Engineers and say, look, I am going to impact half an acre of wetlands here but I will mitigate that impact by creating other wetlands, let's say an acre or an acre-and-a-half or 2 acres of wetlands as mitigation for this impact because, before you can get to mitigation, the developer first has to demonstrate to the Corps's satisfaction that the developer could not avoid the impact on the wetlands. This concept is known as sequencing and, in my mind, it very effectively guts the nationwide permitting process because the Corps can take a very narrow view on the subject of avoidance.

If a nationwide permit is not available, then an individual permit must be sought if the project is to continue. The individual permit is site-specific and it is only available after a time-consuming application process that involves many public hearings involving several different agencies of the Federal Government. The average time for processing an individual permit, according to a study performed by Albrecht and Good—they studied all of the permitting with the Corps over a 4-year period—takes 377 days for an individual permit.

As I discussed at the beginning of my talk, your average seller isn't going to wait around more than 6 months for a developer to satisfy contingencies. Therefore, if you are told that you must get an individual permit from the Corps of Engineers, that is indeed a very, very serious problem because, chances are you are going to have to abandon the project or else close on the property without any certainty that in fact you will be able to proceed with the project at all because there is no guarantee that you will get that permit issued.

I have included in Section 5 of my written materials some local case studies as well as some case studies from some other areas around the country and the purpose of these is to illustrate what the full permitting process means by specific instances. In each of

the local cases that I am going to discuss, a nationwide permit was ultimately issued, so it was a successful outcome from the standpoint of wetlands regulation in that the developer did get the permit. However, in each of these cases, there was a cost associated with the permit issuance. At a minimum, it cost the developer $7,500 in each case and, in one case, the developer lost roughly around $200,000 in order to obtain the nationwide permit.

The first case I would like to talk about is Monticello Village E or Monticello Village Manor and I have brought with me some plats to try and illustrate what happened with this project. The Monticello Manor project was to be a 198-lot project in the city of O'Fallon. The project contained roughly 70 acres on the site. There were two ponds located on the site. There was a small pond located in this area and then there was another pond located here in this area.

The developer had entirely gone through the local regulatory process and had obtained all approvals from the city government when he finally got his determination back from the Corps of Engineers that this site was going to require an individual permit.

Now, what the developer was proposing to impact was less than a third of an acre of wetlands. The total jurisdictional wetlands on this site was .62 acres.

Chairman TALENT. This is wetlands——

Mr. GOSS. As wetlands.

Chairman TALENT. Under this arcane definition of wetlands, right? Were these what you would call—that's a bad way—were these what most people would commonly think of as wetlands, or were these real wetlands?

Mr. GOSS. Well, our soil—Scott had analyzed them and told me they were wetlands, so——

Mr. HARDING. Under the definitions, that's correct.

Mr. GOSS. We would accept those were wetlands.

We did not accept that the farm ponds were jurisdictional wetlands and that was where we had a problem with the Corps of Engineers because up until that time, the local Corps had not been asserting jurisdiction over isolated farm ponds that were in fact manmade. These were livestock ponds on this site. So it came as a surprise when we were told that they were going to assert jurisdiction and put themselves in line with what some other regional Corps of Engineers were doing.

So when we received the notice that we were going to have to get an individual permit, we of course started meeting with the Corps to discuss some different alternatives for the project. What we proposed to do was to construct a lake on the site—here is a picture if you can see that from there—we proposed to construct either a lake of this nature or a lake of this nature on the site by using a creek that runs through the site from west to east. We were going to put a dam here and a spillway and convert our detention area here into a larger lake so that we would have a 2½ acre lake on the site. Then we were going to dedicate all of this area, 7 to 10 acres, as a conservancy area that could not be disturbed.

We thought that that was a creative approach to the problem that these farm ponds were posing for us. The farm pond that we

are talking about is shown in this picture here. You can see the tin can in the middle of the farm pond that was used either for livestock or bait; I am not sure what that was used for. I can tell you that tin can still stands there today because the outcome of our discussions with the Corps was not successful in terms of eliminating that pond.

We were able to demonstrate to the Corps that in fact this small pond that was less than ¾ of an acre located here had to be taken out because the only rear access to the subdivision was here. There was a road already there was that a county highway. There was no way to do the highway geometrics to bring it around the pond and have a connection that would be safe. So the Corps accepted that this small pond had to go but they refused to accept the argument that this other pond could be eliminated because it truly wasn't a wetland, but was merely a livestock pond, and we would mitigate the impact by replacing this pond with a 2½ acre lake. This pond that had to be preserved was about 1½ to 1¾ acres.

So the net effect of our proposal was that the Corps would end up with at least as great or greater waters of the United States on the site, they would end up with a large conservancy area. As I said, that was not acceptable. We did not prove avoidance so we did not pass the sequencing test.

So, given the choice between going through an individual permitting process or accepting that determination of the Corps, we accepted their determination, went back through the local process with the city of O'Fallon and were able to obtain their approval. In the course of that, our contingencies expired on my contract and I had to go back and negotiate with the seller to get him to give me an extension to keep the deal alive.

Chairman TALENT. The intention of the city of O'Fallon was, of course, trying to construct consistent land use rules for its city so the development reflects what the residents of that city want. Their intention for the best use of that land was defeated by this, because they wanted to see the ponds, I presume, removed?

Mr. GOSS. That's correct. They had wanted the ponds to be removed. In fact, it was somewhat ironic that there was another project going on at the same time where a lake was being put in and it was quite controversial and the city had approved it but with great reluctance and I think following—I think the day after that meeting, I went into the city manager's office and said, gee, I have some good news and bad news. The good news is you will have another lake in your city, the bad news is I don't think you want it. We did work through the local process but it was not what they wanted at all.

The financial impact on this development of this regulation was a cost of at least $120,000 to probably $200,000.

The next case study, I would just like to mention briefly, is Country Crossing. That was a project that did not result in the loss of any lots. However, the preapplication time, again this was a nationwide permit, took 6½ months. This was to analyze .887 acres of suspect wetlands on a site that contained 78.66 acres; so it involved a very, very small amount of isolated wetlands. We were required to mitigate by providing over 1 acre of mitigation on site. The cost of that and the analysis was over $10,000.

Chairman TALENT. I want to make one thing clear. You are not talking about wetlands in the sense of Everglades.

Mr. GOSS. No.

Chairman TALENT. When you talk about .887 acres of suspect wetlands, because frankly 6 months to protect an acre of the Everglades, well, maybe, you know. But 6 months to protect something that the average person doesn't even recognize is a wetland is a different thing.

Mr. GOSS. This site was a farm field, in fact, so it was nothing that somebody would have gone on and said, gee, this is a swamp or a wetland that needs to be preserved.

The last case study I would like to mention is called the Village of Dardenne. This project was an 111.45 acre parcel of ground. It contained .26 acres of suspect wetlands and the impact on the wetlands was in this area right here. You can see these strips of ground in this area.

Scott's Company, again, identified that these could possibly be jurisdictional wetlands; the area that we are talking about is a farmer's field. So that the wetlands that we are talking about in this case looked like farmland. The farmer was actually farming the field. Scott went out and looked at it, noted there was a little bit of standing water there, observed Dardenne Creek was to the south, and since this could possibly be a wetland, he did a soils analysis and concluded it was possible these strips could be wetlands.

We took the position with the Corps of Engineers that these were isolated wetlands and they were above the flood waters of the United States because the flood water limits are all south of these wetlands and where we were going to impact the wetlands was north of the flood plain. We were only going to impact the areas in blue. It was roughly a tenth of an acre here of impacted wetlands.

The Corps of Engineers took the position that this was not an isolated wetland because, in fact, this strip extended over into the flood plain and, since the overall strip extended in the flood plain, there was somehow a connection between what we were going to impact here that was outside of the flood plain and the farmed wetlands here that were on the flood plain.

The Corps told us that if we wanted to proceed with this project, we would have to obtain an individual permit; we could not operate with a nationwide permit. Again, this was for, at most, .26 acres of impact.

Again, we did not have a year to wait to try to obtain this permit so what we did instead was redesign the project. We pulled the lot lines back so that the only impact was on this area of wetlands that did not extend at all into the flood plain and the Corps could be satisfied that that was truly an isolated wetland. We have left this strip of what I call farm ground alone and it will remain undisturbed in our development so we are able to proceed with the development. The cost of that adjustment, redesigning the plan, the analysis from Scott, was roughly 7,500, again, to $10,000.

Now, the issue in all of these projects, and I think you pointed this out, is not whether the Corps is properly applying the regulations for 404 permits. They are a conscientious agency and they are probably the best of the agencies to work with. I think the issue

is really whether the country is well served by the added costs that these types of regulations add to the development process, costs that result in increased housing costs and the resulting lost jobs.

Moreover, these regulations add to the burdens of an already overburdened Corps of Engineers. Rather than being able to focus on preserving quality wetlands and evaluating the functions served by a particular wetland or water of the United States, the Corps is inundated with requests for approvals of minor impacts such as those we talked about today and they include the removal of ponds that were created to water livestock.

Now, this time-consuming process is made all the more difficult by the requirement that the impacts have to pass a sequencing and avoidance analysis.

I believe that the wetlands regulations could be significantly improved without the loss of quality wetlands by doing four things. First, the definition of wetlands should be changed to exclude man-made farm ponds, prior converted crop lands with no recapturing if it is no longer a farm, such as what happened in this case, or other artificially created bodies of water. Take those out of regulatory consideration.

Second, the strict sequencing requirements should not be required to be applied in connection with nationwide permits such as Nationwide 26. Rather, I believe the Corps should be allowed to consider the quality of the wetland and the mitigation being offered by the developer.

Third, the Corps should be given jurisdiction over the 404 Program and not be subject to review or veto by the EPA or other governmental agencies, nor should enforcement of this program be divided between the EPA and the Corps of Engineers.

Finally, I strongly believe there should be some type of appeal process with realistic timeframes that fit within the development timeframes we talked about today. They should be provided in the event there is a disagreement between the developer and the review or enforcing agency.

Chairman TALENT. One other question and then, unless you have something more, we will move to the next panel.

As I said, the legislation the House has adopted deals with those subjects. I think one agency enforcement is just a matter of common sense.

Won't most of the rest of the objections be taken care of if we have the right definition of what a wetland is, because you are not going to be developing in areas—it is unlikely that you are going to be developing in areas that really are wet lands, or am I wrong about that?

Mr. GOSS. I think that is true but my experience has now taught me that definitions and statutes are very slippery things. So I think it can be extremely helpful for the Corps to have some direction in terms of looking at the quality and function that the wetlands serve and to allow them to consider mitigation when you are talking about what truly are de minimis wetlands. So if there is a disagreement about whether this falls within the definition or not, at least you are able to have an intelligent discussion with the agency and their hands aren't tied. Because right now, that is the way they feel, they don't have that flexibility.

Chairman TALENT. I thank you all for a very in-depth and interesting presentation and taking the time to be here. Thanks so much.

Mr. GOSS. Thank you.

Chairman TALENT. All right, we will move to panel five, which is going to be a very different area, but one equally as important to consumers. Our fifth panel is made up of representatives of companies concerned with Federal motor carrier safety regulations.

Mr. John Eber is here with Interstate Brands, a baking concern here in St. Louis. Mr. Wayne Mc Kinnon is with Land Management, Incorporated here in St. Louis that is engaged in the professional lawn care business. We have two representatives from Union Electric Company I don't have to explain what that company does, Mr. John Stratton and Ms. Pat Strader.

The witnesses on this panel are with us today to discuss a more sensible approach to the regulation of light- and medium-duty commercial vehicles by the Federal Government. The current patchwork of Federal recordkeeping and reporting requirements is confusing and costly to fleet operators and operators of service vehicles and diverts valuable resources from the enforcement of more serious regulations.

I want to thank all of you for being here today. I understand that in the interests of brevity, we have one statement here which was submitted by Mr. Eber and Mr. Mc Kinnon and that one of the two of you is intending to read it and then everybody else will be available to answer questions.

Mr. MC KINNON. Yes.

Chairman TALENT. Please, whichever one of you wants to do it.

Mr. MC KINNON. I'm Wayne Mc Kinnon. I am president and part-owner of Land Management, Incorporated, in St. Louis. We are about a million dollar lawn care company, irrigation company. We have a fleet of about 15 trucks.

## TESTIMONY OF JOHN EBER ON BEHALF OF INTERSTATE BRANDS

Mr. EBER. John Eber, representing Interstate Brands, which just purchased the Continental Baking Company from Ralston-Purina. The combined fleet of the two companies is now some 16,000 vehicles, 13,000 of which fall into the category which will be discussed today.

Mr. STRATTON. John Stratton with Union Electric Company We serve 1.2 million customers with electric power in the State of Missouri and part of Illinois and we operate a fleet with about 1,400 trucks.

## TESTIMONY OF PAT STRADER ON BEHALF OF UNION ELECTRIC

Ms. STRADER. My name is Pat Strader and I am the Government representative for Union Electric and I work with both Federal and State, working with legislation, trying to correct some operational problems that we have.

## TESTIMONY OF WAYNE Mc KINNON ON BEHALF OF LAND MANAGEMENT, INCCORPORATED

Mr. Mc KINNON. Good afternoon, Mr. Chairman, members of the committee. We appreciate this opportunity to bring your attention to an issue that is very important, not only to our business but to all businesses in this country that operate light- or medium-duty service and delivery trucks under 26,001 pounds.

Simply put, we are here today to urge you to pass legislation H.R. 1885, which redefines the term motor or commercial motor vehicles in Federal law. This bill will eliminate a classic one-size-fits-all regulation on light- and medium-weight duty trucks under 26,001 pounds that only add time and expense to companies providing local sales and service.

The coalition we represent is comprised of nearly 70 companies and trade associations that operate fleets of light- or medium-weight duty trucks. Attached to the testimony is a list of members of our coalition. As you can see, the organizations making up this coalition vary widely in both size and enterprise. We are the lawn care companies, bakeries, dry cleaners, utilities, delivery companies, snack food companies, et cetera, that provide a predominantly local service and deliver products to local merchants and consumers.

Chairman TALENT. Let me just fix something right up front here. You refer to it as light- or medium-weight duty trucks which is technically what they are. But to understand this, these are more often than not vans, are they not, or big pickup trucks or that sort of thing? They are not trucks in the sense that we think of as over-the-road——

Mr. Mc KINNON. No, they are not. They are all basically step vans, delivery vans, a very large number of pickup trucks or light-duty trucks, small 1-ton trucks.

Chairman TALENT. Go ahead, please.

Mr. Mc KINNON. We urge you to support H.R. 1885 because we need to fix a problem that has persisted since the 1930's, adding millions of dollars of unnecessary costs to U.S. businesses every year which stifles our competitiveness and ability to grow. The problem can be resolved by removing a host of regulations from application to vehicles under 26,001 pounds.

Currently, some Federal regulations apply to all commercial vehicles weighing more than 10,000 pounds while other regulations apply only to vehicles over 26,001 pounds, such as commercial drivers' license requirements and drug and alcohol testing requirements. This patchwork of recordkeeping and reporting requirements is confusing and costly to delivery and service fleet operators and unnecessarily diverts valuable enforcement resources from concentrating on the heavier over-the-road tractor-trailer trucks.

Raising the weight threshold is not a new issue but one that has been overlooked by the U.S. Department of Transportation while acknowledging that a disparity exists. Over the years, many of the baking, plumbing, floral, lawn care, snack food, laundry, dairy and other affected industries have commented that the DOT regulations pertaining to route truck sales and services in excess of 10,000 pounds pose an unnecessary regulatory burden. However, while the DOT has opened the docket for public comment on this

issue since 1989 and received overwhelming opposition to the status quo and the definition of commercial motor vehicles, DOT has failed to act.

Most recently, in January of this year, DOT once again closed the docket on readdressing the need for regulations over trucks between 10,000 and 26,000 pounds by simply referring the problem to consideration under the department's zero-based review which will take many years to complete. Meanwhile, the cost associated with compliance in these regulations continue to place an unnecessary burden on our industries.

The following is a list of regulations imposed on vehicles over 10,000 pounds and gross vehicle weight rating regardless of whether your vehicle is a delivery step van averaging less than 75 miles a day or an over-the-road truck driving and delivering hundreds of miles per day.

Chairman TALENT. Go ahead and read them. There's about 2 dozen of them.

Mr. MC KINNON. Driver written examination, driver road test, driver physical examination, driver training, review of driver record, driver must be 21 years or older, driver must read and speak and understand English, driver biannual physical examination, uniform maintenance practices, documentation of maintenance, mechanic training certificate, daily vehicle condition reports, driver file, hours of service, vehicle maintenance file, additional vehicle markings, on-board safety equipment, documentation of authorized passengers.

Chairman TALENT. This is for driving vehicles that may be no more difficult to drive than a regular pickup truck or minivan or something.

Mr. MC KINNON. It includes many pickups and many minitype vans.

Chairman TALENT. Go ahead.

Mr. MC KINNON. It is estimated that the average cost of compliance with these regulations is $500 per driver annually.

Please consider the following facts regarding the inappropriate application of these regulations for trucks under 26,001 pounds. Fact: Three-fourths of all accidents involving commercial vehicles which are reported to DOT involve vehicles over 26,000 pounds.

Fact: The requirement of insurance carriers, State licensing boards, State inspection stations and businesses wanting to avoid costly breakdowns and interruption of service to customers to say nothing of their desire to avoid lawsuit for failing to properly maintain their vehicles and train their drivers are sufficiently strong incentives to ensure that the proper and safe operation of local delivery and service vehicles.

Fact: The Federal Highway Administration's own accident statistics show that drivers of vehicles 10,000 to 26,000 pound gross vehicle weight rating are even less likely than drivers of passenger vehicles to be involved in fatal accidents.

This change in law would also eliminate the confusion about the applicability of Federal statutes making enforcement efforts by State officers and compliance by companies safer, easier and more efficient. Also, safety would be enhanced because enforcement re-

sources would be concentrated on roadside inspections of the heavier, higher-risk vehicles.

In conclusion, changing the definition of a commercial motor vehicle to apply only to vehicles over 26,001 pounds gross vehicle weight rating will standardize enforcement of Federal regulations and eliminate confusion. This redefinition also will allow both regulatory agencies and businesses to concentrate their time and resources on more effective safety initiatives.

Thank you for your kind attention to our concerns and the opportunity to appear before you today on this important matter. We will be happy to answer any questions the committee may have, either today or in writing following the hearing.

Chairman TALENT. I want to note for the audience at the end of the written statements, the coalition lists their concerns about this.

Is there any national quantification of how much cost—you say $500 per driver. Is there any kind of estimation of what the cost is nationally to American businesses?

Ms. STRADER. Not that I know of. We could probably tell you basically what it costs our company. I know utilities, it is a big issue for utility companies—trying to keep the electricity on during emergencies is a big concern for us.

Chairman TALENT. Go through the kinds of vehicles in your own different businesses that are covered by this and mention the ones that we are familiar with so that we get a sense of it and maybe all——

Ms. STRADER. Mr. Stratton will make a statement for us and I think he will cover that in his comments.

Chairman TALENT. You're going to make a statement? I'm sorry. I thought you only had the one.

Why don't you go ahead and then give us your statement and then I can ask some questions.

## TESTIMONY OF JOHN STRATTON ON BEHALF OF UNION ELECTRIC

Mr. STRATTON. Union Electric Company of Missouri is an investor-owned electric utility with headquarters in St. Louis. As I mentioned earlier, we serve approximately 1.2 million electric customers and 116,000 natural gas customers in an area covering 24,000 square miles of Missouri and part of Illinois. We have about 6,100 employees of which approximately 3,200 or 52 percent now hold a commercial drivers license or CDL license. We operate a fleet of about 3,000 units from 46 reporting centers within our service area. Approximately 1,400 of these units are trucks of which 805 or about 57 percent are light- or medium-duty trucks which fall into this 10,000 to 26,000 pound GVW range.

Public utility trucks are typically driven very limited distances. Their primary purpose is not to transport property or passengers, but to facilitate work on power generation, transmission and distribution systems. The average daily miles driven per unit for our fleet is under 50 miles per day. Most of our units operate exclusively in small service territories or districts which are no more than 25 to 35 miles from the reporting center to the job site. Our drivers typically average less than 1 hour per day of actual driving time.

Our drivers and vehicles, even for these light- and medium-duty vehicles, are subject to most of the same DOT requirements, regulations and recordkeeping as interstate tractor-trailer operators operating vehicles in the 70,000 pound to 80,000 pound category.

As a public utility affected with the public interest, Union Electric is charged with the responsibility of providing safe and adequate electric service at reasonable rates. These requirements and regulations, to the extent that they adversely affect a public utility in its duty to provide safe and adequate electric service, compromise the public safety and health.

We concur with the comments of the other presenters here today for the coalition to redefine commercial motor vehicle—the definition of commercial motor vehicles and we would like to even add one further comment related to the State of Missouri.

We are still required, in the State of Missouri, to provide an annual safety inspection for the State and the DOT also requires us to provide an annual inspection for all vehicles covered by DOT, which means that we have unnecessary duplication and waste in performing basically the same type of an inspection for two different regulatory agencies.

Chairman TALENT. Thank you for those statements.

Mr. STRATTON. To follow up with the question you had before, the type of trucks affected, are ¾ ton to 1 ton classification pickup trucks. We also have 1 ton and 1½ ton turcks that we call patrol trucks or trouble trucks. Most of these trucks have small aerial lift devices on them. They typically fall into the range of about a 15,000 to 16,000 chassis. These trucks usually have one operator who works a rotating 8 hour shift providing 24 hour coverage. This is the person who would come to your house, should you have a problem with your electric service, and try to repair it. Even though their actual driving time is pretty limited, just enough time to drive to your house, fix the problem, drive to the next job, these operators are subject to the same regulations as if they were driving 8 hours a day on the interstate highways with a tractor-trailer combination.

Chairman TALENT. That, by the way, prevents employment opportunities for some people, doesn't it? For example, if you are not 21, you can't drive those trucks.

Mr. MC KINNON. Exactly.

Chairman TALENT. So teens—and I don't know if in every instance they ought to be driving. I don't know, an 18, 19, or 20-year-old person couldn't drive, so there are a lot of other requirements that a person may not be as well.

One of the things I am curious about, I kind of hear you all saying that the vast majority of these vehicles with which you are familiar you don't think require any additional kinds of safety regulations; is that correct?

Mr. STRATTON. We would agree with that. You can have a situation where one of our employees can drive to work in his own personal vehicle that would be in the same basic classification, he wouldn't be required to have any special licensing or special recordkeeping requirements for his own personal vehicle but he can get out of that vehicle and get into a company vehicle and he is in a whole different set of regulations.

Chairman TALENT. It seems to me you may be underestimating the cost. You say $500 per person. Of course, that would be a lot. How many employees do you have that are subject to it?

Mr. STRATTON. About 3,200.

Chairman TALENT. So that is a fair amount of money.

Mr. MC KINNON. I think what we are looking at is additional cost above and beyond. Most everybody has drug and alcohol programs in place, we all have very rigid inspection programs, we all have very rigid safety programs in effect already. We are looking at cost above and beyond what our in-house requirement would be.

Chairman TALENT. Accomplishing nothing in terms of additional safety for the people outside the company?

Mr. EBER. I would like to make a comment that many of these vehicles nationwide have automatic transmissions, very similar to what you and I drive every day, so it is not like it is a so-called heavy duty truck with a 10-speed.

Chairman TALENT. You are basically saying don't regulate a bakery delivery truck with the same set of regulations that you would use with an 18-wheeler?

Mr. EBER. Correct.

Chairman TALENT. That is what the Federal Government insists on doing.

Has DOT given any reason, of which you are aware, of why they will not consider or are delaying considering changing it?

Mr. EBER. No.

Chairman TALENT. You are not aware of anything. I would be interested to find out what reason they would give other than just delay.

I also want to emphasize one other point that you made, Wayne, that the statistics of the National Highway Safety Administration show that the fatality rate for passenger cars is greater than for these vehicles.

Mr. MC KINNON. Yes. I think that has a lot to do with the safe driving programs that all the companies put into effect and work with hard on their drivers, primarily for our own insurance costs.

Chairman TALENT. To decrease liability for you all.

Mr. MC KINNON. Exactly.

Chairman TALENT. Another point of distinction is between the big trucks, the semis, the 18-wheelers, being driven all day long typically and driving is the thing that you hire the person driving to do, that's his job, to drive the truck?

Mr. MC KINNON. Yes.

Chairman TALENT. In your case, in many cases, his job may be to fix something or to do landscaping and he has to drive the vehicle to get from one place to another.

Mr. MC KINNON. It is basically transportation, period. Not delivery of goods or driving. We would say, yes, delivery of goods fits into it but we don't basically hire drivers; we have to have ways to get our crews from point A to point B to perform services. Driving is a very, very minor part of their job.

Mr. EBER. In fact, we even call our drivers salesmen. Internally, they are not referred to as a driver.

Chairman TALENT. A lot of salesmen drive a lot of miles.

Thank you all very much for appearing here.

We do have one more panel. We are on the last leg. We are going to take a short break for about 5 minutes and then reconvene.

Thank you very much.

[Recess.]

Chairman TALENT. All right, we'll go ahead with the next panel.

Our final panel this afternoon will focus on regulatory and paperwork burden of financial planners. Our witnesses for this panel are, I hope, Eileen Dorsey—Eileen, are you here? She was here earlier—who is the president of Money Consultants, Incorporated; Mike Meara of Renaissance Financial; and, Mary Gillespie a CPA and attorney at law.

This panel is last but certainly not least. I appreciate you all being here and, Mary, I think we will start with you.

Ms. GILLESPIE. I'm the last choice.

## TESTIMONY OF MARY GILLESPIE, CPA AND ATTORNEY AT LAW OF ST. LOUIS, MISSOURI

Ms. GILLESPIE. Mr. Chairman, my name is Mary Gillespie. I am a practicing CPA and attorney. I previously served as president of the West St. Louis County Chamber of Commerce. Currently, I serve on the Board of Curators of the University of Missouri System. Also, I serve as the co-chairman of the Economic Development Committee for the St. Louis Chapter of the Missouri Society of CPA's.

The Missouri Society, as a matter of policy, disclaims any responsibility for statements made by any of their members and I want to clearly express that the comments today are my own and not the views of any organizations with which I am associated.

I wanted to thank Congressman Talent for inviting the testimony of small business on this very important topic. Many of you may not realize this but the Congressman grew up in this area, almost in the very shadow of this building. He grew up with a little east of here in the city of Kirkwood.

Chairman TALENT. I do recall going to see 101 Dalmatians when the West County Mall was a drive-in movie and my parents used to, as an act of desperation, take my brother and me to drive-in movies because it kept us quiet for a little while. Anyway, thank you.

Ms. GILLESPIE. That was a few years ago, for both of us.

Chairman TALENT. It is longer ago than I would like to think.

Ms. GILLESPIE. A July 1995 article was in the Post Dispatch and it reported that almost 800,000 businesses were incorporated in the year 1993. A survey in the monthly labor review which was October 1994 indicated that over 48 million employees worked for 6 million small businesses. This would be about 55 percent of all private sector workers.

In March 1995, Nations Business published a statement that Federal regulatory compliance costs were almost $600 billion each year. This results in a substantial amount of wasted energy and resources. This is energy and resources that would have been available for business growth.

We all know that regulations and paperwork were involved in the following agencies and statutes. The EPA has the air quality regulations, the water quality regulations, the FIFRA pesticide pro-

gram regulations, the Resource Conservation and Recovery Act, the Superfund regs, water effluent programs and so on.

OSHA includes the indoor air quality regs, the repetitive strain injuries, the ergonomics program, the Industrial Noise Control and Hearing Conservation Programs, the forklift driver training regulations, and they have general industry regulations and construction standard regulations.

The Department of Transportation regs, they are on hazardous materials and pipeline safety. We have the Toxic Substance Control Act, we have mine safety and health administration programs, and finally and not least is the new Americans with Disabilities Act.

The lost opportunity cost and the wasted resources I feel are going to have an even greater affect on the economic development of our Nation in the future, mainly due to the increases in the small business sector of our economy. There were over 10 million self-employed persons in 1993, with about a third of them being women. That was according to the Monthly Labor Review of October 1994.

Now, INC Magazine claims that job growth in the self-employed area in 1993 was twice that of job growth in any other field, so we have talked about the problems and I came up with some suggested solutions.

One is that we should look to streamlining the regulatory process to something like the SBA did and the low document loan procedures. That has been very successful. Hispanic Magazine, in their March 1995 issue, praises the 72 hour turnaround for loan applications with borrowings of $100,000 or less for companies with less than 100 employees and less than $5 million in sales. So that would be a great possibility, just plain streamlining.

Another issue that has been brought up by the Bar Associations is the use of plain language. The Missouri Bar has most recently encouraged the use of plain legal writing which, as Jim and I can tell you from law school was unheard of about 10 years ago.

I would also like to mention that we need to strengthen the Paperwork Reduction Act and the Regulatory Flexibility Act. Regs need to consider risk management and cost/benefit analysis just like we do in the real business world. We do rate of return calculations, any good businessman or woman would certainly look at the rate of return or cost/benefit analysis on any transaction. In my field, we would probably refer to this as just being accountable.

I also think we should adopt judicial review in the Regulatory Flexibility Act. That has been needed for a long time. We also need to establish more de minimis standards to exempt more small businesses. De minimis standards are used a lot of times in tax procedures, that if you don't hit a certain threshold, you are excluded.

Like ARISA, you may have heard of ARISA which passed in 1994. It established different reporting requirements that take into account the actual size of the business. So there are actually three types of businesses and reporting standards for ARISA and that is a great savings for the small business companies.

Also I would suggest we use the GAO more. They do a good job evaluating procedures. Also I would suggest we support the corrections day concept.

In conclusion, I just want to remind everyone about the old saying that we are working so hard to survive all the hurdles that we may not have the energy to finish the race. Kindly remember that big business is laying off hundreds of thousands of people in the United States while small businesses have been absorbing the large numbers of people from the corporate layoffs. They have also absorbed a large number of the baby boom generation and they are also absorbing the large number of women who are returning to the work place.

My final quote is from testimony that was given in July 1995 by an individual from the National Federation of Independent Businesses, and I quote: Get Government off our backs and out of our pockets, unquote.

Mr. MEARA. Off our land.

Chairman TALENT. Thank you very much, Mary. Let me just say that we have—I think most of these changes I talked about that Congress is considering now are going to become law in one form or another, but past legislation referring to the Regulatory Flexibility Act by adding judicial review to it. Most people are not aware that we have this good act and it requires all agencies when they determine that regulation has a substantial impact on a significant number of small businesses, to conduct analysis to determine whether they could accomplish the goal of that regulation in some means that was less intrusive to small business. That was passed in 1980.

The problem is, there is no way of enforcing it if they don't do it and, over the years, the agencies have just ignored it in the breech. It is all dependent on how vigorously it was enforced from the Office of Management and Budget, basically, of the White House. So all we did is we put judicial review in that so the courts can overturn regulations that don't comply with it and that passed without much debate even at all. It had very substantial consensus behind it.

We also put risk assessment and cost/benefit analysis into the regulatory agencies in a bill that the House passed earlier this year.

Mary and Mike are going to talk—Mike Meara will be next—are going to talk a little bit about general problems with regulations as concerns financial planners. They deal with a lot of businesses and see that. Eileen is going to focus, I hope, on the impact of regulations on financial planners themselves. So, Mike, please, you are next.

## TESTIMONY OF MIKE MEARA, CERTIFIED FINANCIAL PLANNER, ON BEHALF OF RENAISSANCE FINANCIAL

Mr. MEARA. I want to thank you for asking me to testify before the subcommittee today. I have been in the financial planning industry for about 12 years and have owned my own company for the past 5. I am currently president of the St. Louis chapter of the International Association of Financial Planning and am an advisory counsel member for the Missouri National Federation of Independent Businesses.

One of the unique aspects of working in my field is that many of us begin our careers as independent contractors like I do and

very quickly had to learn that there is a myriad of complex and elusive regulations with which we must comply or attempt to comply. I spent a great deal of my time during those first few years just trying to educate myself about what I had to do to stay in compliance. Since that time, I chose to focus my marking up efforts toward developing small business owners as clients and working with the small business community.

My father is a small business owner and very early in life I was exposed to his entrepreneurial endeavors and frustrations. I believe that this first-hand experience provides me with a great deal of insight and has helped to shape me as an adviser to my current and future clients. But I can't begin to quantify the frustration and aggravation that I had both experienced and witnessed in my clients that have sought to comply with the Byzantine array of Federal, State and local regulations that exist today.

There is absolutely no way that the average small business owner can every be 100 percent in compliance with Government regulations which they are expected to follow. They simply don't have the time to educate themselves about them, the resources to pay with, or the time to devote to compliance.

Chairman TALENT. Mike, let me interrupt you a second. You hit a really good point and I am glad that it came up in this last panel.

We have so many regulations and they are so vague that honest people cannot be in compliance with them. It creates this—the problem I referred to in the first panel. People are afraid because they don't know. They know that they are probably in violation of something, they don't know what it is and it really alienates them from the Government. Even if the Government is trying to be reasonable in dealing with them, they know that somebody could walk in and shut them down if they wanted to.

The answer is to have laws people understand and comply with. Tyrants do that. They create so many laws that they can arrest anybody at any time. The Emperor Caligula, I love this example, he wrote the laws in small letters and put them at the top of high monuments because he didn't want anybody to know what they were and then he could arrest anybody any time he wanted.

We have a similar atmosphere, particularly for small business people dealing with regulations and I am glad you pointed it out. I thank you. Please go ahead.

Mr. MEARA. Without a doubt, I agree.

Today, I would like to tell you about a few of the regulations that are of particular concern to me as I advocate small business issues and I will start with health care.

This is a really big issue amongst the self-employed and small group employers. Last evening, I received a phone call at home from my partner who was in a meeting with one of his clients who is a small business owner. The client was aggravating over the fact that he could not deduct what he paid for his own health insurance premiums yet he could deduct 100 percent of what he paid for his employees' health insurance premiums.

Now, fortunately, I was aware of a Federal regulation that he could use to pay for his health insurance premiums on a pretax basis, but it is a very arcane rule. To most people, they wouldn't have any idea that it ever existed, as this gentleman didn't nor did

his accounting firm. He hires a certified public accounting firm and they never made the suggestion about the tool that he could use to pay for his own health insurance on a pretax basis.

They can't understand why they can provide their employees with a tax deductible benefit for health insurance yet not take advantage of it themselves. So 100 percent deductibility for self-employed individuals for payment of their health insurance.

Medical savings accounts is another issue under health care and employers are attempting to keep the costs of employee benefits down and to make their employees responsible citizens and participate in their own health care decisions and one way they can do this is to put dollars aside on a pretax basis into a savings account that their employers could access to pay for some of their own health care expenses so that they could increase the deductibles that they have with insurance companies and reduce their premiums so they have access to money set aside in the eventuality that they would have to pay monies out for their own health care and it could be a supplemental retirement savings account for those people so if they were fortunate enough not to experience any health care expenditures which forced them to tap that savings account, then they could have that money available at a later date for retirement or even use it for some of their health care expenses at retirement.

I am sure the Republicans are very interested in this idea as they attempt to make some cuts in Medicare. This would be an additional supplement that employers and employees could take advantage of to really pick up their share of medical expenses at a later date.

I am not so sure how all employers feel about it but a number of employers that I have discussed this idea with believe that there ought to be some form of guaranteed issue for health insurance. I can't tell you how many times the employer has been annoyed after they applied for health insurance with an insurance carrier and they may have 10 or 15 employees and because of one employee's health history, they are unable to provide health insurance to their employees without excluding that employee or the insurance company just won't provide health care for the employer group, so some type of guaranteed issue programs.

I see one of the problems with the guaranteed issue program and Roy Heinberger, who is Chairman of Blue Cross and Blue Shield, at a meeting I was at on Monday said we would love to be able to do this, we would love to be able to provide everybody health insurance. But the problem is, if we start to do it, then we are going to lose money and we will go out of business because none of the other health insurance carriers would be required to do it. If they aren't required to do it, then we are going to get all that business and, unfortunately, we are going to accept a lot of bad risks and pay out a lot of claims and we will lose money and eventually go out of business and be able to provide insurance for no one.

But he was very forceful when he said, this is something we want, we want to do this. Perhaps, as a way of doing it, I know in the State of Missouri, if you have an automobile you are required to sign a financial responsibility disclosure or financial array, a document that says, yes, I am financially responsible and

I will pay if I ever have an accident or I do have insurance that would cover the cost of that accident. I wonder why we don't require people to be financially responsible for their own health care? Why are so many people out there who are eligible to receive health insurance coverage and have the resources to pay for it, choose not to, and then utilize our health care system when a tragedy befalls them or an unforeseen situation? It is unfortunate but why is that? Why don't people take their own financial responsibility and expect you and me and all the other taxpayers to pay the freight when they eat it?

Taxation is the next issue and I could have a list that would go off this page but I won't. Expanded IRA's would be very important to a number of individuals. I have several clients who, because their employer provides them a retirement plan, they are ineligible to make—and they both work, they are ineligible to put pretax savings in their own IRA account. This was changed in the 1986 Tax Reform Act.

These are people who want to prepare and save for their own future and are in their 30's and don't expect there to be any Social Security when they retire and they want to prepare for their own retirement savings and the amount of money they are able to put aside for retirement on a pretax basis is limited by the Federal Government because their employer already provides them with a retirement savings plan. But they don't believe, and we have done the calculations, Eileen I am sure has done those calculations as well, there is absolutely no way they will be able to fund their entire retirement through their employer's retirement plan, even if they contribute as much as they possibly can through it. So they want additional means to put money away on a pretax basis and save it for retirement.

Eliminate estate taxes. It is beyond me why our Government seeks to tax people who, through their hard work and tremendous effort, have accumulated which today are modest amounts of wealth, $1.2 million. Somebody with—a farmer with a good tract of land could have over $1.2 million in assets or someone who owns their own home and has a couple of insurance policies could have over $1.2 million. Our Government begins to tax those people at the 32, 33 percent tax rate for every dollar over $1.2 million. These people have already paid tax on that money. Why are they being taxed again for being diligent about accumulating wealth?

Eliminate taxes on savings and investment. Again, people have already worked hard to put money aside and to invest in this country and to put money into savings so that other people could borrow that money to buy homes, to buy automobiles, to expand their businesses and they are being taxed on the interest that they earn and the capital gains or the interest they earn off of an investment they make. These are people who are diligent at investing in their own future and our Government penalizes them for investing in their own future by taxing wages or income that they had already paid tax on.

Alternative to the punitive Social Security taxes, I am self-employed and I currently pay 15.3 percent of my income out in Social Security tax. 15.3 percent of my income out in Social Security tax on top of the Federal income tax, State income tax and local taxes

I may pay, personal property taxes that I would pay, sales taxes that I would pay. I don't bother to do this very often because I don't want to end up in the hospital from all the stress it creates but—calculate the amount of taxes I pay in a year, it oftentimes is in excess of 50 percent of the gross revenue that I generate through my firm. It is absurd to me that 50 percent of my efforts goes to pay taxes and I don't expect to ever see Social Security and I believe Congressman Talent and I have had this conversation before at a meeting I was at with him previously. I know it is not going to be there and I think it is illusory for people our age to believe that Social Security is going to exist in its present form. Perhaps dramatically reduced benefits. I would never count on it and I never advise my clients to count on Social Security. Any calculations we make for their own retirement planning, we exclude any possible money they would get from Social Security because I don't want them to figure that into any monies that they need to build for retirement. If they get it, it is icing on the cake.

Chairman TALENT. A national news magazine did a poll of people under 30 and statistically more of them believe that aliens have visited the Earth than believe that they will ever get Social Security returns.

Clearly we need to maintain benefits for existing recipients, and those are at a stage in life where they cannot change their plans, while trying to make provision so that for the baby boom—well, it is not the baby boomers, it is for those younger, about our age I guess, I'm 38, can make some provision for themselves in the future because Social Security is OK until the baby boomers hit and then after that it is actuarially impossible, is what I am told. We just can't do it.

So we have got to maintain the commitment to the current recipients and then do something with people coming on about 20 years down the road.

Mr. MEARA. One of the suggestions I heard was to have minimum mandatory safety net contributions and then individual accounts, discretionary individual accounts for excess contributions. I can't understand as an investment financial planning professional why I don't have control over investing the money for my own retirement. I don't need the Government to invest my money for my retirement. Now, if they want to restrict me about that I have to put money aside for retirement or how it can be invested reasonably, I am willing to accept that. I am also willing to accept the obligation and commitment that our country has made to people who are retired or are close to retired, that we take care of them and that we would provide people who, for whatever reason, are unable to provide for themselves at retirement some type of safety net. But, unfortunately, I have clients that earn in excess of $100,000 a year at retirement and are receiving Social Security income. To me, that is ridiculous. They don't need it and they shouldn't be getting it. Because it was never intended, I believe, for those people to have that money. It was meant to be a safety net and now people expect it as a right.

Financial planning industry specific, and I believe we will talk about this more and I saved it for last, we would like to continue independent contractor status for registered representatives. In my

industry, there is movement toward having those of us that are affiliated with a securities firm become employees of that securities firm and we don't consider ourselves employees because 100 percent of our income is not made through that securities firm, yet they are responsible for regulating or for making sure that we comply with regulations and various compliance issues associated with our actions.

At best, it is an arm's length relationship that we have with these broker/dealer firms and we want to continue as independent contractors so we can continue to take advantage of the tax laws that currently exist and to control our own destiny rather than to have some quasi-employer that is perhaps we earn 10, 15, to 30 percent of our revenues through that relationship and have control of us as an employer.

Enhanced investment advisory regulation without unnecessarily burdening practitioners. We believe that for too long the regulation within our industry has not enhanced the public perception of financial planners and investment advisers and that we want to improve—people like me and Eileen want to improve what regulation exists and want to enhance enforcement of that regulation. We don't want the industry getting a bad name because of a couple of people who perhaps don't have the commitment and ethics that Eileen and I do in treating our clients fairly and justly.

Those are a few of the regulations that affect me and many other small business owners and I don't believe that Congress ever intended to place such tremendous unnecessary burdens upon the small business owner but unfortunately their short-sighted good intentions have hindered the efforts of those productive members of society that I believe the country's founders hoped to nourish or sought to nourish and hoped would flourish.

I want to thank you for listening and urge you to continue your efforts to nurture the productive and wealth creating endeavors of the small business entrepreneur.

Chairman TALENT. Thank you, Mike.

Eileen will be last and this is an interesting kind of regulatory problem which we haven't encountered here before. It is where the market has changed and functions have developed that don't fit the patterns of regulations. So you end up having a really arbitrary situation and this is what—the situation certified financial planners are in.

Please, Eileen, go ahead.

## TESTIMONY OF EILEEN DORSEY, PRESIDENT, ON BEHALF OF MONEY CONSULTANTS, INCORPORATED

Ms. DORSEY. Thank you, Congressman Talent. I certainly appreciate the opportunity to testify today about some of the problems that we face in our industry and particularly the burden of the paperwork and regulation. I am very grateful that you have been very supportive of some of the issues that we have faced in the past and are very interested in this issue.

I am representing myself as the owner of a small business, an independent financial planning firm, and I am a certified financial planner practitioner. I am also President of the Institute of Certified Financial Planners, St. Louis Chapter and I am representing

our members. I have also talked to our national organization and they support what I am going to talk about today.

For background purposes, certified financial planners are trained as advisers. They are trained as advisers in the areas of finance, money management, budgeting, taxes, insurance, estate planning and employee benefits. What certified financial planners really do is they help people and they help the average middle class American. They don't just help the wealthy person. Most certified financial planners work with the average middle class American; only a few work with the wealthy. What they do is they help them integrate the various financial disciplines and help them put it all together.

We talk a lot about the primary care provider in the medical industry right now. In my opinion and most of our opinions, the CFP is the primary care provider in the financial services industry because they help people put it all together.

One of the problems is there is no specific financial planning regulation at either the Federal or State level. Because there is no specific financial planning regulation, certified financial planners are required to abide by numerous other regulations which were originally intended to regulate just the specific activities that they cover. Prior to the evolution of financial planning, which started back in approximately 1973—and, again, financial planning integrates the various specific financial activities, these specific financial activities were regulated by the various different industries, the insurance industry regulated insurance, the securities industry regulated securities, the IRS regulated taxes, et cetera, et cetera. At this point, it made no sense to have financial planning regulation. It did make sense to have the different regulatory agencies.

At this time, there was no need for financial planners. The Government and your company took care of you; the need for financial planners has evolved over the past two decades. It is part of the transition from big Government and total reliance on Government to self reliance and taking care of yourself. We are going through this transition right now. It is going to be an extremely big transition.

Unfortunately, many of the existing laws that we have to abide by are very archaic. They reflect the past and certainly not the current and definitely not the future. To compound the problem, many regulators enforcing the regulations do not understand financial planning; they define financial planning as investing and, even worse, most regulators treat financial planning as securities transactions. In reality, financial planning is about more than just investments; it is about clients achieving their financial goals such as a comfortable retirement and the education of their children.

Even investing is about more than just transactions. Advice is primary to the securities transaction. Investing is simply a subset of financial planning. Complying with the regulations is not the problem; it is the regulatory duplication, the paperwork burden and expense of complying that is the problem.

Just to give you an example of how many different agencies regulate us, we are regulated by the Securities and Exchange Commission at both the Federal and the State level, we are regulated by the Insurance Commission at the State level and there is also some

Federal interference. I just read a compliance memo the other day where the feds were coming in and telling us what to do with insurance. We are regulated by the NASD which is a huge, bureaucratic self-regulatory body. We are regulated by the Certified Financial Planner Board of Standards. We are regulated by the IRS. We are regulated by the State Securities Commissioner and the State Insurance Commissioner and we are regulated by all of the various different State securities commissioners and all of the various different State insurance commissioners. We have 50 States.

Unfortunately, each agency has their own rules which are somewhat similar but slightly different and their own forms which again are very similar but just different enough to require a different form. This creates an enormous paperwork burden and dramatically increases our expenses which, of course, have to be passed on to our clients. The powerful bureaucratic need to grow must take second place to the evolution of the industry and the needs of our clients. In my opinion, the needs of our clients are primary.

It is against human nature to voluntarily downsize. Everybody wants to carve out their own territory rather than streamlining and merging as necessary. We need a higher authority, the congressional higher authority, to examine the whole picture and help ease the burden.

Just to give you an example of what happens when the average client comes into our office, I have to have them complete and sign a lot of different forms. We need a new account form to satisfy the securities regulators, the NASD and the advisory regulators. Fortunately, this form can be combined. We need a letter of engagement, disclosing our business practices and our fees to satisfy the Certified Financial Planner Board of Standards and Practices.

We need a different letter of engagement to satisfy the advisory regulators and they would like a different form for each different time that we work with the clients, even those long-term clients that come in all the time that we work with long term. These cannot be combined because of different requirements.

We need to give the client an ADV Form part 2 and we need to get a receipt signed by them saying that we gave it to them. This form usually makes no sense to the client because it answers ambiguous legal type questions about the business practices of the broker/dealer which Mike mentioned and the umbrella advisory firm. It does not describe at all the business practices of the person that they are going to be doing business with, such as myself or Mike.

On an annual basis, we have to offer to give them an updated ADV Form Part 2, the same form. We need to give the client a personal bio to satisfy the Certified Financial Planner Board of Standards and a philosophy of service. Now, these two last forms make sense to me because they tell them how I do business, my business practices and what I am going to do for them.

Keep in mind that this is only the beginning. It becomes worse when they become a full-fledged client and we start working for them. Typical client files average 100 to 200 pieces of paper and long-term client files average 1,000 pieces of paper.

Chairman TALENT. Eileen, for how long a period of time would you——

Ms. DORSEY. I have been in this business for 13 years and I have a couple client files that have more than 1,000 pieces of paper in them.

Chairman TALENT. That is obviously not paper relating to the substantive advice; that is Federal and/or State paperwork burden, right?

Ms. DORSEY. Right. The part relating to the substantive advice would be maybe 5 or 10 percent; the rest is all of the different paperwork and that sort of thing.

Chairman TALENT. It is Government-mandated paper?

Ms. DORSEY. Right, and the forms and things like that that we are required to get on a monthly basis, the mutual fund companies and other investment companies have to send us. We don't need them that often. Sometimes, they send us two forms.

The file clerk can't separate all of these forms so a lot of the forms in the file are duplicates.

Chairman TALENT. Finally, if one of your clients were here, what percentage of that paper would he or she say they have read and found some use in? I know that is speculative.

Ms. DORSEY. What percentage they have read? Maybe the original financial planning service and letters that we have sent to them so that, again, may be another 5 or 10 percent.

What we send to them in plain English is the information that they actually want, the specific advice where we are telling them what to do. Yes, you should participate in your 401K plan, you should put 10 percent into it and you should put 40 percent into the balanced fund, 10 percent in the blue chip stock fund, et cetera. The specific advice that we give to them. That is the reason that they come to us and that is what they want and they want it in plain English. They don't want it in this legal type language and most of these forms are this legal type language that none of us can understand.

Chairman TALENT. The thing is, if a person is coming to a certified financial planner, that in itself, 99 percent of the time, indicates a certain level of sophistication which suggests that they don't have to be—they are not like children who have to be protected down the line?

Ms. DORSEY. Most certified financial planners, they are trained, they have the certified financial planner license, most of them have a college degree, over 25 percent have a masters degree; I myself have two masters degrees.

Most of them are trained. The problem is that anyone can call themselves a financial planner. You don't need a license or you don't need any credentials or any college or anything like that and that is the problem. We are trying to protect the people against these people, from these people and that is the problem. But the regulators are going after us; they can't go after them because they don't come within their jurisdiction.

That is why we feel we need some sort of overall financial planning regulation, not just the specific activity regulation.

Chairman TALENT. Go on. Thank you.

Ms. DORSEY. I mentioned this but, unfortunately for clients, anybody can call themselves a financial planner and establish a financial planning practice and give you advice. That is one of the biggest problems in the industry.

The duplication of regulation and paperwork nightmare cost my business and my clients a lot of money. My estimate is that I spend 30 percent of my time complying with unnecessary and duplicate regulations, sometimes silly regulations. This does not include the additional time that is spent by staff members or file clerks or other people who also have to deal with this paperwork.

I would rather spend that time helping clients. I am trained to help clients, I am trained to give clients financial advice and integrate their investments, their insurance, their taxes, their employee benefits, their 401K plans and things like that. This is what I like to do, this is what I am trained to do, this is what I think most of us are very good at doing and most importantly this is what our clients want. This is really what they want from us.

Considering the retirement crisis in America, I believe it is in the best interests of the country that I spend this time, my valuable time, helping my clients with their needs and goals and not working with all this paperwork and that sort of thing.

I don't know if most people are aware but most Americans, the average middle class American is only saving about one-third of what they need to save to be able to retire comfortably and maintain their same standard of living in retirement. This translates into the fact that most people will retire with only half of what they need to maintain their same standard of living. We do have a real retirement crisis in this country.

Congressman Talent, again I appreciate the opportunity to testify about this matter and I think what we really need to do. The bottom line is that Congress needs to study the financial services industry and the activities of the certified financial planner. I would recommend the following process:

First, I think we really need to study the industry, learn the industry, talk to all the players in the industry as well as the clients, study financial planning as well as the specific activity sectors such as the insurance sector, the securities sector, the tax sector.

Second, learn about the needs of clients. This is definitely primary. We really need to know what clients need.

Third, make an objective recommendation separating necessary regulation—because some regulation is necessary—to protect the client from unnecessary and duplicate regulation.

I don't want to take up any more of your time but I am attaching several specific examples to my testimony that I am handing in. Thank you again, Congressman Talent.

[Ms. Dorsey's statement may be found in the appendix.]

Chairman TALENT. Thank you, Eileen. Those examples are very useful.

Ms. DORSEY. We could also give you copies of different compliance memos and things like that. One of the problems is I don't have a copy of the book that states the laws that I have to follow and that is why it is hard to be specific about specific rule numbers. I only get that information when it is communicated to me.

Mr. MEARA. There is a book put out by the IMP. It is over 500 pages.

Ms. DORSEY. I have some of that information and I also have the Series 27, which means I am a financial and operations principal. I did due diligence at the group practice that I was with so I actually have studied more of the regulations than most of the people because there are very few people who have the Series 27. But even I am confused about some of these rules.

Chairman TALENT. I'll just put it all in the record, the examples Eileen gives.

[The information may be found in the appendix.]

Chairman TALENT. Most clients are terribly confused about who they are doing business with because there are so many companies that have to be disclosed to them, they have a difficult time understanding how it all fits together: I do not advertise any more because I am scared to death about not being able to comply with the confusing rules and the ad has to have so much other junk in it that the people would not get your message anyway.

There is a whole series of regulations designed to ensure an adequate amount of information to consumers.

Ms. DORSEY. We have to protect the consumer. That is definite.

Chairman TALENT. I agree with you but it acts on the assumption that the market will not provide information that people deem useful when, in fact, it is part of every business to provide information to the people you are trying to do business with, to the extent necessary to get new business with them. They know how much they want. If they want to know something more about you, they ask.

Now, I am not saying that there shouldn't still be some regulations but the impact, and this is what it seems to me to are saying to me when I comment on this, particularly in the securities and investing field and financing field, the Government requires so much information it is counterproductive because people cannot understand it; it is confusing or it is so lengthy they don't read it. I have been in that situation many times. The required information was so lengthy I didn't want to go through the hassle of reading it and I just signed it at the bottom line.

Ms. DORSEY. Most people don't read these forms and things like that and we don't have any problem with our executives, people in management, physicians, people like that. They are used to paperwork in their business. We give them the forms, they say yes, I'm used to this in my business and they just sign them.

The people who we really need to help even more though are those people who get so confused by the forms—I had one gentleman about 2 or 3 months ago. He really wanted to do business with me and I had met him at a workshop that I did for the IRS, but he didn't like the fact that he was going to have to sign five to seven different forms. So he said, can I have my information, and he just decided to leave, he canceled the engagement. But he was not a real sophisticated person and he just doesn't understand the paperwork business. He worked in an industry where there is no paperwork.

Chairman TALENT. What did he——

Ms. DORSEY. Well, he wasn't a white-collar worker in other words. He didn't have any paperwork at his level.

Chairman TALENT. So now he gets no advice?

Ms. DORSEY. He probably ended up going to somebody that wasn't a certified financial planner, wasn't regulated, didn't have any paperwork and probably got bad advice and possibly got put in bad investments.

Chairman TALENT. One other question I wanted to go into. Sometimes people have to comply with regulations because they engage in a particular transaction that is regulated, they market stocks or something.

Now, it doesn't—in informing this area, if Congress were to act or just to pull out and leave it to the States then to do it, wouldn't you have to be careful that we are not regulating, let's say, stock brokers because they do something where you could do the same thing and not be regulated because you are not a stock broker?

Ms. DORSEY. You have to be careful. I think the securities transaction has to be a subset of financial planning, the insurance transaction needs to be a subset of financial planning. The stock broker then would just be regulated in that particular subset whereas the financial planning regulation would regulate us, would cover all the various different subsets.

Chairman TALENT. So you might be subject to the same kind of regulations as they are when you actually buy stock for somebody or sell insurance or something?

Ms. DORSEY. You just wouldn't have to do five different forms if you were doing securities and insurance and tax work and estate planning and employee benefit work.

I think we definitely need some level of regulation. We just have too much; the Government has gotten too big and taxes have gotten too high. We are going more toward the self-reliance and depending upon yourself rather than depending upon other people.

Our industry is growing dramatically because people need our help. In St. Louis, we have just recently started a money makeover program with the St. Louis Post Dispatch to make people more aware that certified financial planners are available to help them with these issues and we have been getting a lot of referrals over our national referral services. I have gotten a lot of phone calls in my office and we give out the 800 number.

There are a lot of people in St. Louis that need certified financial planners such as ourselves to help them. They just didn't know that we existed before. But this industry is growing dramatically because we are now managing our own money and taking care of our own finances. The Government isn't doing it for us anymore and our employers are tending to do less and less for us anymore so we have to take responsibility for our own retirement.

Chairman TALENT. Maybe a good way to end the hearing would be to say that Congress needs to take cognizance of the transaction costs that its regulations impose, which is something that most people in Congress simply had no concept of. That is changing now. The fact that it costs to comply with these things and that is time and energy and money you cannot spend on something else, I mean, to hear your testimony, you spend 30 percent of your time complying with the paperwork you wouldn't do if not for the Gov-

ernment, and your clients don't want. Then Mike said out of your remaining time, whatever you earn there, you give 50 percent of it to the Government. It just doesn't leave you a lot of time to meet your own career goals.

Thank you very much for being here, the three of you. That is all we have for this hearing, the Subcommittee on Regulation and Paperwork. As I said before, we are going to try and do another one in October. I and my staff will be around for a few minutes after the hearing and I thank everybody for participating, all of the witnesses and again I want to thank Edward D. Jones for the facilities.

Thank you very much. The hearing is closed.

[Whereupon, at 1:30 p.m., the hearing was adjourned, subject to the call of the chair.]

# APPENDIX

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**Statement of Representative Bill Zeliff**

**Regulation & Paperwork Subcommittee Field Hearing**
**Panel V**
**August, 23, 1995**

**On the Burdens of DOT Regulation of Light & Medium Duty Trucks**

Current Department of Transportation regulation of light and medium duty vehicles exemplify the classic one-size-fits-all regulation that this Congress seeks to eliminate. Trucks in the 10,000 to 26,000 pound range typically are used for local delivery operations, traveling less than 75 miles daily. Yet, they are subject to some of the same regulations meant for heavy, over-the-road vehicles traveling hundreds of miles daily. Many of the regulations that currently apply to light and medium duty vehicles date back to the 1930s. They are no longer necessary for this class of vehicle because of, among other reasons, state licensing and inspection laws, and insurance companies that ensure that the vehicles are safe.

Small businesses across this Nation are particularly hard hit by these regulations. Compliance with paperwork requirements, such as drivers files, vehicle maintenance files, and documentation of authorized passengers, cost businesses anywhere from $200-$400 per vehicle. In addition, some vehicles are now just under the 10,000 pound level, but new equipment required under the Clean Air Act will push them over the 10,000 pound threshold, further increasing the costs to small businesses. Other DOT regulations, such as written driver examinations, road tests, vehicle maintenance and additional vehicle markings are duplicative of state licensing and inspection laws and do not serve to increase the safety of these vehicles.

On June 16, 1995, I introduced H.R.1885 to address these problems by redefining "commercial vehicle" as a vehicle weighing more than 26,000 pounds.

This legislation intends to eliminate the burdens placed on businesses utilizing light and medium duty by current DOT regulations. Considering the fact that three-fourths of all the accidents involving commercial vehicles reported to the DOT involve vehicles over 26,000 pounds, curtailing the regulations applying to light and medium duty trucks will not adversely impact public safety. Trucks are expensive pieces of equipment, especially for smaller businesses. It is therefore in businesses' best interest to maintain their vehicles and have highly trained drivers. The deregulation of this class of vehicle would merely standardize the enforcement of federal regulations, freeing assets of both federal regulatory agencies and business for more effective safety initiatives.

I thank Chairman Talent for addressing the regulatory burdens placed on small business by current DOT regulation of light and medium duty trucks. This Congress is dedicated to reducing excessive federally mandated paperwork and eliminating duplicative and unnecessary or outdated regulations and I look forward to working with my college from Missouri to achieve this goal.

# MONEY CONSULTANTS, INC.

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August 23, 1995

Congressman James M. Talent
1022 Longworth House Office Bldg.
Washington, DC 20515

Subj: August 23 Testimony

Dear Mr. Chairman:

Thank you for the opportunity to testify today about the burden of small business regulation and paperwork as it relates to the financial services industry and particularly the Certified Financial Planner practitioner. This is a complicated area of regulation and one not easily understood. I hope my testimony will shed some light so that Congress can ease this burden.

I am representing myself as the owner of a small business and independent CFP practitioner. As president of the St. Louis Chapter of the Institute of Certified Financial Planners, I am also testifying on behalf of our members. (Most of our members operate in the same and/or similar capacity as myself. Most CFPs that work with clients in an advisory capacity choose to operate as independent practitioners because it is difficult to work for the client if you work for the firm. There is too much conflict between the clients' best interest and the firm's best interest.)

For background purposes, Certified Financial Planners are trained as advisers in the areas of budgeting and money management, investments, taxes, insurance, employee benefits and estate planning. They advise the average middle-class American (not just the wealthy) about their finances, help them coordinate and integrate the various different financial aspects of their lives and also help them implement that advice. You can think of CFPs as the "primary care provider" in the financial services industry. (For additional background information about various financial credentials, I am attaching an excerpt from my article on Financial Credentials & What They Mean.)

There is no specific financial planning regulation at either the federal or state level. And because there is no specific financial planning regulation, Certified Financial Planners are required to abide by numerous other regulations that were originally intended to regulate just the specific activities that they cover. Prior to the evolution of financial planning which integrates various specific financial activities, these specific activities were always performed by different individuals/groups so it made sense to have different regulatory agencies.

There was no need for financial planners. The government and your company took care of you. The need for financial planners has evolved over the past 2 decades. It is part of the transition from big government and total reliance on government and employers to self-reliance and taking

care of yourself.

Unfortunately, many of the existing laws are archaic. They reflect the past and certainly not the current and definitely not the future. To compound the problem, many regulators enforcing the regulations do not understand financial planning. They define financial planning as investing. And even worse, most regulators treat financial planning as securities transactions. In reality, financial planning is about more than just investments, it is about clients' achieving financial goals such as a comfortable retirement and the education of their children. And even investing is about more than just transactions - advice is primary to the transaction. Investing is simply a subset of financial planning.

Complying with the regulations is not the problem, it is the regulatory duplication, paperwork burden and expense of complying that is the problem.

To give you an example of how many different agencies regulate us, we are regulated by the Securities and Exchange Commission at both the federal and state level, the Insurance Commission at the state level with some federal interference, NASD (huge bureaucratic self-regulatory body), Certified Financial Planner Board of Standards, IRS, State Securites Commissioner, State Insurance Commissioner.

Unfortunately, each agency has their own rules which are somewhat similar but slightly different and their own forms which again are very similar but just different enough to require a different form. This creates an enormous paperwork burden and dramatically increases our expenses.

The powerful bureaucratic need to grow must take second place to the evolution of the industry and the needs of our clients. It is against human nature to voluntarily downsize. Everybody wants to carve out their own territory and enlarge that territory rather than streamlining and merging as necessary. We need the Congressional higher authority to examine the whole picture and help ease the burden.

Just to give you an example, when the average client comes in our door we have to have them complete/sign numerous forms before we can talk to them.

We need a new account form to satisfy the securities regulators, the NASD and advisory regulators. Fortunately this form can be combined. We need a letter of engagement disclosing our business practices and our fees to satisfy the Certified Financial Planner Board of Standards and Practices. We need a different letter of engagement to satisfy the advisory regulators and they would like a different form for each different activity even for ongoing long-term clients. These can not be combined because of different requirements. We need to give the client an ADV Form Part II (and get a signed receipt). This form usually makes no sense to the client because it answers ambiguous legal-type questions about the business practices of the broker-dealer and umbrella advisory firm and does not describe the business practices of the person that they are going to do business with. On an annual basis we have to offer to give them an updated ADV Form Part II. We need to give the client a personal bio to satisfy the Certified Financial Planner Board of Standards and philosophy of service. This makes sense.

Keep in mind that this is only the beginning, it becomes worse when they become a full-fledged client and we start working for them. Typical client files average 100-200 pieces of paper and long-term client files average 1,000 pieces of paper. You have to keep most files forever nowadays because the statute of limitations does not always hold and it is ambiguous as to when it starts. Another problem is that in addition to federal requirements, triple licensing is required in most states - securities, advisory and insurance. Of course this means triple fees. Can't these agencies share information and fees and standardize their rules?

Unfortunately for the clients, an advisor that does not have credentials or licenses can operate without any forms or signatures which is what clients would like because it is easier and expedient. Keep in mind that anyone can call themselves a financial planner and practice financial planning.

The duplication of regulation and paperwork nightmare costs my business and my clients a lot of money. My estimate is that I spend 30% of my time complying with unnecessary/duplicate regulation(s). (This does not include additional time spent by file clerks.) I would rather spend that time helping clients. And considering the retirement crisis in America, I believe that it is in the best interest of the country that I spend this time helping clients.

The bottom line is that Congress needs to study the financial services industry and the activities of the Certified Financial Planner. I recommend the following process:

1) First - Learn the industry - talk to all the players in the industry as well as clients. Study financial planning as well as the specific activity sectors.
2) Learn about the needs of clients - this is primary.
3) Make an objective recommendation separating necessary regulation to protect the client from unnecessary/duplicate regulation.

Some of the questions that I would like to ask are. Do we really need regulation at both the federal and state level? Our state regulators will not even accept the federal definition of solely incidental. Wouldn't one agency rather than numerous agencies be more efficient and cost effective? Can't the paperwork be standardized? Why is it that if you call a securities transaction a securities transaction it has to be transacted through a broker-dealer and thus heavily regulated but if you call it an advisory transaction it does not have to be transacted through a broker-dealer and falls under different and a lot less regulation? And the insurance industry is allowed to sell some securities without a securities or advisory license which means no securities regulation? Can't the regulations be communicated to us in plain English? Why can't prospectuses be written in plain English that people can understand?

It is hard to be specific about the exact rule numbers that cause these problems because of the lack of a central source for all of the rules. Unlike the tax code which is complicated but accessible in one source, there are numerous sources for the laws that we have to abide by. I have been in this business since 1983 and have never seen a complete book. We have minimal access to those sources even though we are expected to follow them. The regulators have access to the laws but we only get them in bits and pieces.

Following are additional examples of regulatory and paperwork burden.

Example 1
Mutual fund companies are required to send numerous statements throughout the year and prospectuses that no one can read. Every transaction (even address corrections) requires a new statement. Mutual fund companies also send the advisor two or more copies. It is even worse if we have the client in a managed mutual fund program where a designated money manager is watching the funds and making appropriate changes. The client receives a new prospectus for every mutual fund in the account approximately every month even though clients give discretionary authority to the money manager to make all their decisions such as buying and selling, money is held in a trust account and clients gets monthly statement from the trustee. The SEC wants to make sure that the client knows what is going on. Clients are not dumb. They are concerned about all this paperwork because they understand that the paper and postage alone cost a lot of money.

Does it make sense to give a client (or even print) a huge prospectus that is written in a language that they can not read? Wouldn't it make more sense to print something that they can understand and thus would read? We need less legal language and more plain English in prospectuses.

Example 2
We have to keep a copy of every letter sent to clients in their client file which makes sense. What does not make sense is that we have to also keep a copy in the correspondence file. And if advisory work is involved we have to keep another copy in the advisory services file in case the SEC wants to know what we were paid for.

Example 3
Another example of unnecessary paperwork happens when limited partnerships are reorganized or another way of putting it when the general partners figure out another way to rip off the clients. Clients gets tons of paperwork that is written in worse than legal language that even the typical attorney could not possibly understand. Of course, the cost of these legal reorganizations/battles are paid for by the clients. And of course, the SEC has totally failed in their regulation of limited partnerships and has allowed this to happen. They drown you in paperwork to protect the consumer but do not even investigate the general partners regardless of what they do with client's money, conflicts of interest, etc. They have no jurisdiction because general partners who have discretionary authority over clients's money are not required to register as investment advisers.

Exanıple 4
Another example of unnecessary cost caused by unnecessary paperwork is that I recently had to double my office space to accommodate additional paper/filing requirements. Additionally, the broker-dealer that I am affiliated with is installing an extremely expensive new filing system to accommodate additional paperwork. This cost does not include additional space requirements and labor.

Example 5
The broker-dealer that I am affiliated with recently went through an extensive SEC audit which I am told requested more paperwork than anyone could ever physically read.

Example 6
Most clients are terribly confused about who they are doing business with because there are so many different companies that have to be disclosed to them. They have a difficult time understanding how it all fits together.

Example 7
Most of us do not cold call. I have never made a cold call in my life but we now have to spend money on the new cold call regulations to make sure that no one calls anyone that does not want to be called. The way I have solved the problem of unwanted phone calls at my own home is by buying a $30 answering machine to screen calls.

Example 8
I do not advertise anymore because I am scared to death of not being able to comply with the confusing rules and the ad has to have so much other junk on it that the people would not get your message anyway.

Example 9
Similar to the medical industry, most of us are scared to death of being sued because the regulators are implying that we have to protect the client from himself. Practicing very defensively is increasing the cost to our clients. We are also scared to death of not complying

with the regulations which we are having a hard time getting access to, understanding and keeping up with the constant changes.

**FINANCIAL CREDENTIALS & WHAT THEY MEAN...**Although the term financial planner implies the practice of financial planning and the use of the financial planning process, there are no specific financial planning regulations at either the federal or state (Missouri & Illinois) level. This is unfortunate for the financial services consumer because it means that anyone can start a financial planning business and/or call himself/herself a financial planner.

This does not mean, however, that financial planners are without credentials or regulation. In fact, most financial planning professionals have highly respected credentials.

Additionally, most of the specific activities that financial planners perform such as developing financial plans, advising you about investments, implementing those investments for you, advising you about insurance and implementing the insurance for you are regulated at both the federal and state level. For example, in most states investment advisory activities and securities activities are regulated by the State Securities Commissioner. Investment advisory and securities activities are also regulated at the federal level by the Securities Exchange Commission (SEC). Securities activities are also regulated by the National Association Securities Dealers (NASD) which is a self regulatory organization. Insurance activities are regulated by the State Insurance Commissioner.

However, because of the lack of specific financial planning regulation, it is important to understand the various financial credentials and what they mean.

**Certified Financial Planners** (CFPs) are educated in money management, investments, retirement, insurance, taxes, employee benefits, budgeting and estate planning. They are trained to utilize the financial planning process in working with clients. The CFP is the "primary care provider" of the financial services industry. CFP practitioners should also be registered investment advisors or under the umbrella of a registered investment advisory firm. They may also have a securities license (series 7) and an insurance license to transact securities and insurance business.

**Registered Investment Advisor**. Anyone who provides investment advice should be registered as an investment advisor or work under the umbrella of a registered investment advisory firm. All investment advisory activities have to be conducted through a registered investment advisor/registered investment advisory firm.

**Certified Public Accountant** (CPAs) are educated in auditing and taxes. CPAs who also practice financial planning usually either hold the Certified Financial Planner (CFP) designation or the Personal Financial Specialist (PFS) designation. If they practice financial planning, they should also be a registered investment advisor or under the umbrella of a registered investment advisory firm. They may also hold a securities license and an insurance license to transact investment and insurance business.

**Enrolled Agent** (EAs) license is received direct from the Internal Revenue Service. Only CPAs, attorneys and enrolled agents are allowed to practice before the IRS. Enrolled Agents who also practice financial planning usually hold the Certified Financial Planner (CFP) designation. If they practice financial planning, they should also be a registered investment advisor or under the umbrella of a registered investment advisory firm. They may also hold a securities license and an insurance license to transact securities and insurance business.

**Securities License (Series 7)** is required to transact securities business such as buying and selling individual stocks, bonds, mutual funds, variable annuities, etc. All securities activities have to be conducted through a broker-dealer.

**Stockbrokers** have a securities license. They are trained in securities. Brokers are most valuable to clients who need help choosing individual stocks and bonds. All securities activities have to be conducted through a broker-dealer.

**Insurance Agents** are trained in insurance. Sometimes they hold a license to sell securities (series 7) as well. Missouri insurance regulations prohibit insurance agents from holding themselves out as financial planners unless they actually practice financial planning. The regulations also require that anyone giving you advice about insurance hold an insurance license even if they do not implement or sell you insurance.

**Chartered Financial Consultant** (ChFC) is the insurance industry's financial planning designation. Many insurance agents who practice financial planning also hold the Certified Financial Planner (CFP) designation.

**Money Managers or Asset Managers** directly manage client's assets. They have discretionary authority to buy and sell individual stocks, bonds, mutual funds and other asset classes for clients. Many are Certified Financial Analysts (CFA). CFAs are trained to analyze securities.

Mr. Chairman - thank you again for the opportunity to express our thoughts and concerns.

Sincerely,

M. Eileen Dorsey, MBA, MS, CFP, EA
President

MED/cr

# Reinventing the Regulatory System: No Downsizing in Administration Plan

by Melinda Warren and Barry Jones

## Introduction

Much has been written and discussed about lowering the regulatory burden on American businesses and citizens in recent years and public dissatisfaction with this burden has been growing. A recent *Times Mirror* poll reported that 63 percent of the public thinks federal regulations do more harm than good.[1]

The American people approve of action on the regulatory front. A joint survey conducted in April by Republican Ed Goeas and Democrat Celinda Lake found that only 16 percent of those polled say that Congress has gone too far cutting government regulation. Thirty-two percent believe it has not gone far enough and 27 percent believe it has acted correctly.[2]

On November 8, 1994, people embraced change by electing a Republican-dominated House of Representatives and Senate for the first time in 40 years. The House's "Contract With America" specifically called for major reforms in federal regulation, including a moratorium on regulation, cost-benefit analyses, and strengthened personal property rights.

Backlash against overzealous regulation produced one of the early "Contract" successes. The House passed an across-the-board moratorium that would block most federal rules retroactively from November 1994 until Congress finishes debating and enacting a broader bill to curb unnecessary regulations. On March 29, the Senate approved somewhat weaker legislation allowing Congress 45 days to review and possibly overturn new regulations. The Senate did not, however, endorse the moratorium.

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More recently, House Replications have been trying another tactic to roll back regulation. The GOP leaders hope to cut money used for enforcing dozens of federal health, safety, and other standards.[3]

President Bill Clinton, in his 1996 *Budget* states:

> This Administration has worked hard, and successfully, to reform the regulatory process. Its goal is not only to scrap outdated, unjustified or unnecessarily costly rules. It is also to improve the quality of necessary regulations in order to serve the public good. In short, the Administration's goal has been to make rules more sensible.[4]

In March, President Clinton announced a "Reinventing Government" initiative which would allow federal inspectors to give small enterprises more breaks on fines and commanding the Environmental Protection Agency (EPA) and the Food and Drug Administration (FDA) to slash paperwork requirements and deregulate manufacture of low-risk products. EPA will reduce record-keeping by 25 percent, and allow "minor" polluters six months to clean up. For big business, Clinton authorized an expansion of the market trading of "pollution credits" for acid rain to embrace water effluents and smog emissions. EPA will also allow factories to "throw out the rulebook" if their own method of eliminating pollutants beats federal prescriptions.[5]

While these changes appear substantial, critics claim that on the regulatory front President Clinton is "three days late and $2.50 short."[6] Many of his announced reforms are simply recycled from earlier proposals. According to *Washington Times* columnist Jeff Nesbitt, President Clinton realizes he is in trouble on the regulatory front. He cites five reforms proposed by the president in March that either have been previously announced or will have little impact:

1. Exempting more than 100 categories of low-risk medical devices from pre-market review by the FDA was first announced in the *Federal Register* in January with very little fanfare.

2. Allowing drug manufacturers to change the way they produce an approved drug without FDA pre-approval if the risks are negligible sounds proactive. But the uncertainty of deeming a drug a negligible risk will almost certainly guarantee that few drug manufacturers will take the FDA up on its offer.

3. Eliminating outdated requirements for approval of insulin and antibiotic drugs. Updating requirements based on new scientific information is routine, and does not constitute real reform.

4. Reducing overall EPA reporting and record-keeping requirements by 25 percent, saving businesses and local governments "millions" of hours and hundreds of millions of dollars. This sounds vaguely like the Internal Revenue Service's pledge several years ago to simplify its tax returns.

5. Giving small business a "grace period" to correct EPA violations. These businesses don't want a grace period, they want the EPA to disappear altogether.[7]

Regardless of whether or not the President's proposed reforms are substantial, most people would expect the call for regulatory reform to have resulted in reduced spending and smaller staffs in the federal regulatory apparatus and that President Clinton's *Budget* for the Fiscal Year 1996 would reflect the country's attitude toward regulation. Such assumptions would be incorrect.

The Center for the Study of American Business has monitored trends in federal regulatory spending and staffing for the past 20 years, and has developed 27 years of data. This year's analysis of the President's budget shows that both spending and staffing will again reach *an all-time high*. When it comes to "reinventing government," downsizing is one tool that this administration appears to prefer to leave in the tool box.

## Total Costs of Regulation

This report analyzes the spending and staffing trends for the 55 federal regulatory agencies for fiscal year 1996. There is no attempt to quantify the total compliance costs imposed on U.S. businesses and consumers by these regulations. Thus, the numbers listed in this report do not include the costs citizens and business owners pay to comply with federal regulation.

However, the cost of compliance is rising, and at a rapid rate. Yet most people do not even know what they pay for federal regulation. The "price tag" is typically buried in the costs of goods and services. CSAB Director Murray Weidenbaum estimated that complying with federal regulations cost $63 billion in 1976 (or $120 billion in constant 1987 dollars).[8] Dr. Thomas Hopkins of the Rochester Institute of Technology has conducted the latest comprehensive review of the costs of regulation on the American

economy. In 1990, he estimated that regulation costs American consumers $400 billion ($353 billion in constant 1987 dollars) each year, raising the prices of goods and services by $4,000 for every family.[9]

There are right and wrong reasons to regulate and good and bad ways of regulating. Properly designed regulation can correct shortcomings in the marketplace that lead to what economists call external costs. Where resources are free and open to everyone — water and air are good examples — incentives to refrain from polluting are diminished. In fact, doing so raises the cost of any enterprise even when cleaning the air and water generates more benefits than costs to society as a whole.

This situation has been frequently cited as justification for government intervention. That does not mean, however, that all rules designed to deal with environmental concerns are cost-effective or even sensible. Nevertheless, the basic justification for governmental intervention in this aspect of economic life is clear.

In contrast, regulations that stifle competition — industry-specific rules limiting entry or price — nearly always cost the nation more than the benefits derived by the groups these rules are designed to protect. The industry-specific rules are usually labeled "economic regulation" while those dealing with pollution and other externalities are categorized as "social regulation."

## Overview of the 1996 Budget

The 1996 *Budget* calls for $16.6 billion in spending for regulatory programs — a 6.3 percent increase over the totals now estimated for fiscal year 1995. (See Table 1.) After adjusting for inflation, this represents a 3.3 percent real increase, or a total of $12.4 billion (in 1987 dollars).[10] This is the largest increase in federal regulatory spending since President Bush's 1992 budget. Absent congressional budget cutting, a new peak in regulatory spending at the federal level will be reached in fiscal 1996.

Regulatory expenditures in President Clinton's proposed budget are actually growing faster than the total spending of the federal government. In 1996, the real increase for the entire budget is projected to be only 1.8 percent, whereas regulatory spending is scheduled to increase by 3.3 percent.

Table 1

## Summary of Administrative Costs of Federal Regulatory Activities

(Fiscal Years, Millions of Dollars in "Obligations")

| | 1970 | 1975 | 1980 | 1985 | 1990 | 1994 | (Estimated) 1995 | 1996 | % Change 1995-96 |
|---|---|---|---|---|---|---|---|---|---|
| **Current Dollars** | | | | | | | | | |
| **Social Regulation** | | | | | | | | | |
| Consumer Safety and Health | $710 | $1,491 | $2,349 | $2,689 | $3,796 | $5,076 | $5,228 | $5,479 | 4.8% |
| Job Safety and Other Working Conditions | 128 | 359 | 753 | 862 | 1,002 | 1,154 | 1,206 | 1,335 | 10.7% |
| Environment | 214 | 841 | 1,651 | 2,495 | 4,164 | 5,232 | 5,360 | 5,920 | 10.4% |
| Energy | 64 | 275 | 550 | 481 | 462 | 568 | 623 | 563 | -9.6% |
| **Total Social Regulation** | $1,116 | $2,966 | $5,303 | $6,527 | $9,424 | $12,030 | $12,417 | $13,297 | 7.1% |
| **Economic Regulation** | | | | | | | | | |
| Finance and Banking | $86 | $151 | $362 | $624 | $1,080 | $1,290 | $1,429 | $1,384 | -3.1% |
| Industry-Specific Regulation | 91 | 160 | 279 | 289 | 320 | 454 | 473 | 497 | 5.1% |
| General Business | 115 | 206 | 355 | 507 | 743 | 1,128 | 1,250 | 1,377 | 10.2% |
| **Total Economic Regulation** | $292 | $517 | $996 | $1,420 | $2,143 | $2,872 | $3,152 | $3,258 | 3.4% |
| ***GRAND TOTAL*** | $1,408 | $3,483 | $6,299 | $7,947 | $11,567 | $14,902 | $15,569 | $16,555 | 6.3% |
| *Percentage Change* | | 147.4% | 80.8% | 26.2% | 45.6% | 28.8% | 4.5% | 6.3% | |
| **Constant 1987 Dollars** | | | | | | | | | |
| **Social Regulation** | | | | | | | | | |
| Consumer Safety and Health | $2,017 | $3,030 | $3,276 | $2,849 | $3,353 | $4,022 | $4,031 | $4,104 | 1.8% |
| Job Safety and Other Working Conditions | 364 | 730 | 1,050 | 913 | 885 | 914 | 930 | 1,000 | 7.5% |
| Environment | 608 | 1,709 | 2,303 | 2,643 | 3,678 | 4,146 | 4,133 | 4,434 | 7.3% |
| Energy | 182 | 559 | 767 | 510 | 408 | 450 | 480 | 422 | -12.2% |
| **Total Social Regulation** | $3,170 | $6,028 | $7,396 | $6,914 | $8,325 | $9,532 | $9,574 | $9,960 | 4.0% |
| **Economic Regulation** | | | | | | | | | |
| Finance and Banking | $244 | $307 | $505 | $661 | $954 | $1,022 | $1,102 | $1,037 | -5.9% |
| Industry-Specific Regulation | 259 | 325 | 389 | 306 | 283 | 360 | 365 | 372 | 2.1% |
| General Business | 327 | 419 | 495 | 537 | 656 | 894 | 964 | 1,031 | 7.0% |
| **Total Economic Regulation** | $830 | $1,051 | $1,389 | $1,504 | $1,893 | $2,276 | $2,430 | $2,440 | 0.4% |
| ***GRAND TOTAL*** | $4,000 | $7,079 | $8,785 | $8,418 | $10,218 | $11,808 | $12,004 | $12,401 | 3.3% |
| *Percentage Change* | | 77.0% | 24.1% | -4.2% | 21.4% | 15.6% | 1.7% | 3.3% | |

Note: Numbers may not add to totals due to rounding.

Source: Center for the Study of American Business, Washington University. Derived from the Budget of the United States Government and related documents, various fiscal years.

Figure 1 gives an overview of the trends in regulatory spending since 1970. It is characterized by a 120 percent increase in expenditures (in constant 1987 dollars) between 1970 and 1980, much lower growth from 1980 to 1990 (16 percent), and a substantial increase of 21 percent between 1990 and 1996.

Staffing figures will also reach an all-time high in 1996, with projections for federal regulatory personnel reaching nearly 132,000. As shown in Table 2, however, this is less than a 1 percent increase over estimates for 1995. The number of people needed to run the regulatory apparatus of the government has risen 5 percent since 1992. While President Clinton's plans to cut 250,000 people from the entire federal bureaucracy, federal regulatory personnel, as a group, will not feel the knife.

The trends in regulatory staffing are portrayed in Figure 2. Personnel growth and reduction over the 26-year span of this data show much the same pattern as spending. After a 74 percent growth rate between 1970 and 1980, staff was cut by 6 percent in the 1980s. Since 1990, however, there has been a 15 percent increase in federal regulatory personnel.

### Data on Individual Agencies

Detailed information on the changes in budgets and staffing for each of the 55 federal regulatory agencies can be found in Appendix Tables A-1, A-2, and A-3. Historical data for 1970, 1975, 1980, 1985, 1990 are included to provide some perspective to the more current figures for 1994, 1995, and 1996. The numbers for 1995 and 1996 are based on estimates prepared by the Clinton administration.

Detailed information on spending by each of the regulatory agencies is given in Table A-1 in nominal terms (current dollars). Table A-2 converts these costs into real, inflation-adjusted (1987) dollars. Table A-3 details staffing figures for these agencies.

At the individual agency level, in constant dollars terms, 33 agencies are slated to receive larger budgets in 1996 than in 1995. Spending at 24 of these agencies is expected to rise more than the regulatory budget as a whole. The budgets of 22 agencies will lose funding in 1996. In effect, the overwhelming majority of regulatory agencies are getting a raise.

Figure 1

Figure 2

Source: Center for the Study of American Business, Washington University. Derived from the Budget of the United States Government and related documents, various fiscal years.

Table 2

**Staffing Summary for the Federal Regulatory Agencies**
(Fiscal Years, Full-time Equivalent Employment)

| | 1970 | 1975 | 1980 | 1985 | 1990 | 1994 | (Estimated) 1995 | 1996 | % Change 1995-96 |
|---|---|---|---|---|---|---|---|---|---|
| **Social Regulation** | | | | | | | | | |
| Consumer Safety and Health | 41,463 | 51,237 | 55,213 | 45,056 | 50,243 | 58,194 | 58,150 | 58,392 | 0.4% |
| Job Safety and Other Working Conditions | 6,486 | 12,334 | 17,894 | 14,229 | 13,610 | 12,817 | 13,012 | 13,565 | 4.2% |
| Environment | 4,525 | 11,907 | 16,993 | 16,054 | 20,057 | 22,817 | 24,306 | 24,233 | -0.3% |
| Energy | 219 | 5,045 | 5,433 | 3,954 | 3,441 | 3,481 | 3,411 | 3,374 | -1.1% |
| **Total Social Regulation** | 52,693 | 80,523 | 95,533 | 79,293 | 87,351 | 97,309 | 98,879 | 99,564 | 0.7% |
| **Economic Regulation** | | | | | | | | | |
| Finance and Banking | 4,969 | 6,401 | 9,524 | 8,864 | 13,049 | 15,544 | 15,441 | 15,368 | -0.5% |
| Industry-Specific Regulation | 5,675 | 7,013 | 7,483 | 5,296 | 4,629 | 4,615 | 4,912 | 4,980 | 1.4% |
| General Business | 6,609 | 8,306 | 9,251 | 8,739 | 9,611 | 11,098 | 11,697 | 12,007 | 2.6% |
| **Total Economic Regulation** | 17,253 | 21,720 | 26,258 | 22,899 | 27,289 | 31,257 | 32,050 | 32,355 | 1.0% |
| ***GRAND TOTAL*** | 69,946 | 102,243 | 121,791 | 102,192 | 114,640 | 128,566 | 130,929 | 131,919 | 0.8% |
| *Percentage Change* | | 46.2% | 19.1% | -16.1% | 12.2% | 12.1% | 1.8% | 0.8% | |

Source: Center for the Study of American Business, Washington University. Derived from the Budget of the United States Government and related documents, various fiscal years.

In terms of the regulatory headcount, however, this is not the case. Twenty-three agencies will lose staff, 13 will remain at the same level, and 18 will increase. Sixteen of the agencies show an increase greater than 0.8 percent, the projected growth for the total regulatory staff.[11]

### The Major Regulatory Categories

In addition to showing the total growth of federal regulatory expenditures and personnel, Tables 1 and 2 provide summary information on the two major categories of regulation — social and economic. The

tables also break down these categories into seven broad areas. Data are for selected years beginning with 1970. Estimates from the President's 1996 *Budget* for 1995 and 1996 are also included. All dollars in the following section are expressed in constant 1987 dollars, unless otherwise indicated.

### Social Regulation

Social regulation is by far the larger of the two main categories, comprising more than 80 percent of the funds for federal regulatory spending. This area is subdivided into four more specific areas of regulation: Consumer Safety and Health, Job Safety and Other Working Conditions, Environment, and Energy. Overall, social regulatory programs are projected to grow by 4.0 percent in 1996. Personnel at these agencies are slated to grow at a much smaller rate, 0.7 percent.

Figures 3a-3d show the spending trends in each of the social regulatory areas from 1970 through 1996 while Figures 4a-4d address personnel trends. The primary focus of this report is the president's 1996 *Budget* and much of the discussion will be on this year.

*Consumer Safety and Health.* Figure 3a outlines the costs of consumer safety and health programs over the years. This graph shows steady growth since 1970 with a slight dip in the mid- to late-1980s. Overall, consumer safety and health agencies grew by 103 percent from 1970 to 1996.

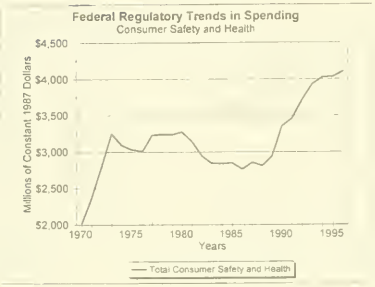
This category of agencies will experience a 4.8 percent nominal, or 1.8 percent real, spending increase in 1996. Appendix Tables A-1 and A-2 provide data for each of the 18 consumer safety and health agencies. Some that are expected to grow at a faster rate than the rest of the regulatory budget are the Food Safety Inspection Service, Federal Aviation Administration, Federal Railroad Administration, and the National Highway Traffic Safety Administration.

The consumer safety and health personnel record is shown in Figure 4a. Historically, staffing for these agencies has been erratic, with a period of dramatic reduction in the Reagan administration. However, current staffing levels are the highest ever, 41 percent more than in 1970.

Figures 3a-3g

**Spending Trends for the Seven Regulatory Groups, 1970-1996**
(Fiscal Years, Millions of Constant 1987 Dollars)

Figure 3a[1]




[1]Note: Scale does not begin at zero.

Figure 3c

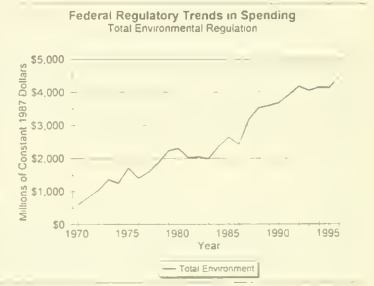
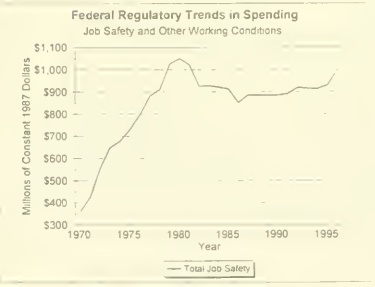
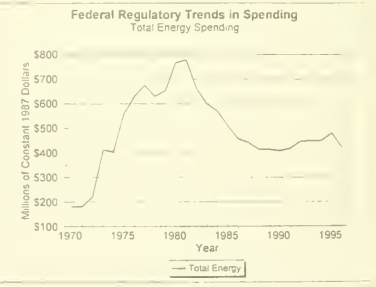



Figure 3b[1]




[1]Note: Scale does not begin at zero.

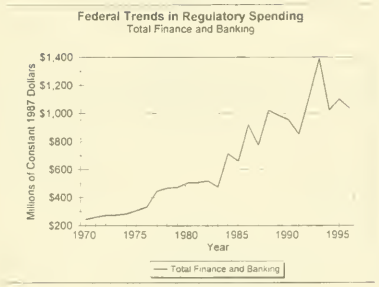
Figure 3d[1]




[1]Note: Scale does not begin at zero.

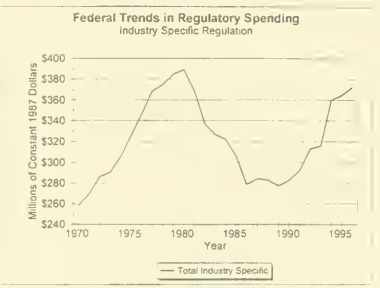
Figures 3a-3g (continued)

Figure 3e[1]



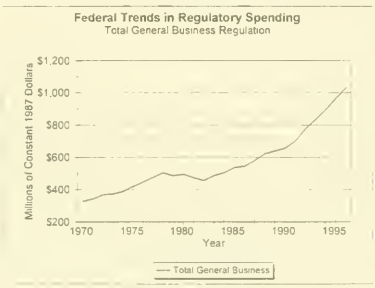

[1]Note: Scale does not begin at zero.

Figure 3f[1]




[1]Note: Scale does not begin at zero.

Figure 3g[1]



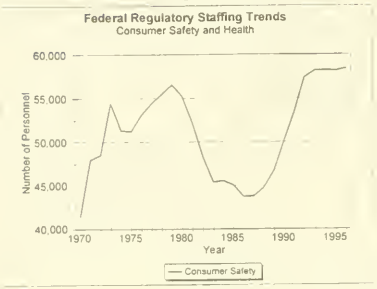

[1]Note: Scale does not begin at zero.

Source: Center for the Study of American Business, Washington University. Derived from the Budget of the United States Government and related documents, various fiscal years.

Figures 4a-4g

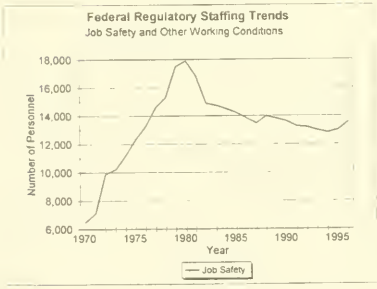
**Staffing Trends for the Seven Regulatory Groups, 1970-1996**

Figure 4a[1]




[1]Note: Scale does not begin at zero.

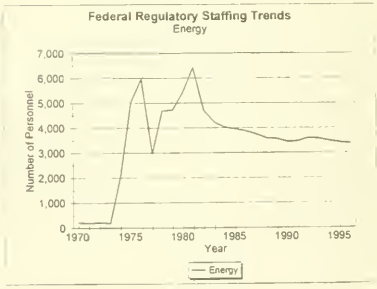
Figure 4b[1]




[1]Note: Scale does not begin at zero.

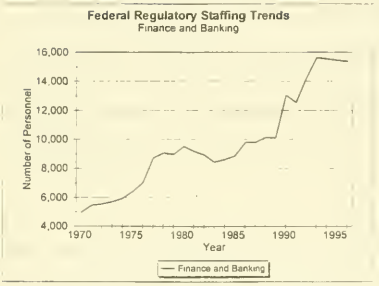
Figure 4c

Figure 4d



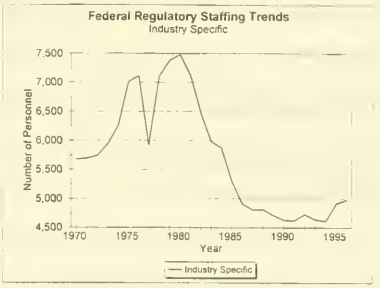
Figures 4a-4g (continued)

Figure 4e[1]




[1]Note: Scale does not begin at zero.

Figure 4f[1]




[1]Note: Scale does not begin at zero.

Figure 4g[1]

[1]Note: Scale does not begin at zero.

Source: Center for the Study of American Business, Washington University. Derived from the Budget of the United States Government and related documents, various fiscal years.

According to the current *Budget*, one economic regulatory agency, the Interstate Commerce Commission (ICC), will be phased out over the next few years. The ICC's duties include regulating railroads. Some of this authority is being transferred to the Department of Transportation and helps to explain some of the increase in funding for the Federal Railroad Administration (FRA). According to Jolene Molitoris, Administrator of the FRA, the 26 percent spending increase for this agency is requested primarily in programs that will improve rail infrastructure development and the Next Generation High Speed Rail Program.[12]

Department of Transportation Secretary Federico Pena announced an intent to introduce legislation to spin off the Federal Aviation Administration's (FAA) air traffic control services into a wholly owned government corporation supposedly free of government red tape, beginning in fiscal year (FY) 1997. The core federal role in aviation is to regulate safety and encourage appropriate infrastructure investment. If the air traffic control function leaves the purview of the FAA, budgets and staffing numbers will have to be revised. No reductions are requested in the FY96 budget. In fact, FAA is scheduled for a 4.9 percent increase in funding for 1996.

Budget blueprints put out by the chairmen of the House and Senate budget committees propose deep cuts in spending for transportation infrastructure and operations. Both plans would reduce spending for highways, transit, airports and other transportation purposes significantly. However, most spending for transportation purposes is not considered regulatory.

The agencies in this category will add less staff than the regulatory apparatus in general. Only the Food Safety and Inspection Service, the Food and Drug Administration, and the Coast Guard show significant personnel growth.

*Job Safety and Other Working Conditions*. Spending overall for the nine agencies in this category has expanded steadily since CSAB began tracking the regulatory budget. Starting at $364 million in 1970,

combined spending will reach $1.0 billion in 1996, a 175 percent increase (in constant 1987 dollars). (See Figure 3b.)

Every agency in this category will have larger budgets in 1996 than in 1995 except for the Occupational Safety and Review Commission and the NLRB. The other labor-related regulatory agencies have the greatest projected growth of all regulatory categories (10.7 percent in current dollars, 7.5 percent in constant 1987 dollars).

However, in what some are calling a sweeping assault on organized labor and others call long overdue regulatory reform, Republicans legislators and business representatives are seeking to: (1) overturn President Clinton's recent executive order to deny federal contracts to companies that permanently replace striking workers, (2) amend the 1935 National Labor Relations Act to give management greater freedom to establish "employee involvement" committees that labor leaders decry as company unions, and (3) repeal the 1931 Davis-Bacon Act and the 1965 Service Contract Act which require contractors to pay the local prevailing wage to workers on federally financed projects.[13] The Congressional Budget Office has estimated that the federal government would save $6.2 billion over five years if Davis-Bacon and the Service Contract Act were repealed. Secretary of Labor Robert Reich promises to fight any retreat on protections in the labor laws.

In March 1995, the House of Representatives rescinded $12.5 million or about 10 percent of the funding for Labor Department programs, specifically the School-to-Work Opportunities Act. This program was passed by Congress last May. A recession package approved by the Senate in April 1995 includes a $1.6 billion reduction in current funding for the Labor Department. This bill restores about a third of the cuts in jobs programs passed by the House. Labor Department estimates of the bill's impact break down these cuts as follows: $6.6 million for the Occupational Safety and Health Administration (OSHA), $1.1 million for the Employment Standards Administration, and $160,000 for the Mine Safety and Health Administration.[14]

The Equal Employment Opportunity Commission (EEOC) will receive 12 percent more funding in 1996 than in 1995. EEOC estimates that some 96,000 discrimination charges will be filed with the agency in the coming fiscal year. The agency estimates that 32,000 of these cases will be under the Americans With Disabilities Act, an increase of 19 percent over FY 95.[15] Another issue of concern to EEOC is the current backlash over affirmative action, which the agency enforces.

The Pension Welfare Benefits Administration's (PWBA) budget is scheduled for a 14 percent increase in 1996. According to recent reports, this increase is for upgrading technology, providing more expert witnesses in court, and reducing the agency's case backlog. The PWBA will devote nearly all of its additional appropriations to enforcement and compliance.[16]

There have been substantial reductions in the number of personnel at the job safety agencies since 1980. As shown in Figure 4b, staffing for job safety and other working condition agencies peaked at 17,894 in 1980. In 1996, the regulatory headcount for this category is projected to be 13,565, an increase of 4.2 percent over 1995 levels.

*Environment.* As can be seen in Figures 3c and 4c, the trend in spending and staffing for the environment portion of the regulatory budget has been growing, almost interrupted since 1970. Overall, growth during this time is a whopping 629 percent. Of course, most environmental regulations have been written since 1970. There was a slight dip in both personnel and expenditures in the 1980s, but growth has been steady since that time.

The Environmental Protection Agency (EPA) accounts for 86 percent of the environmental part of the regulatory budget.[17] In 1996, this agency will account for 31 percent of the all federal regulatory spending. Staffing makes up a much smaller percentage, 14 percent, of total personnel. As mentioned in the introduction of this report, EPA has been given some latitude by the president and might soon begin to rid itself of some of the command-and-control regulation that has typified its administration.

Many of the nation's primary environmental regulations are due for reauthorization or are under review by Congress. The Clean Water Act have received attention in the House of Representatives and the Senate expects to take up reform of this law in the summer. Reform of Superfund (Comprehensive Environmental Response, Compensation, and Liability Act) is currently being debated in subcommittees of the House and Senate.

The Endangered Species Act is up for reauthorization. This statute has been at the heart of the private property rights debates in Congress. The Clean Air Act's auto-emission requirements have become the focus of efforts to relieve states and localities of unfunded mandates.

Several environmental programs will be affected if the House of Representatives manages to delete funding for certain regulations. Endangered Species Act mandates, new listing of endangered species, the Section 404 wetlands program, indoor air quality regulations, and the radon action program are on the list of 62 regulations the House has targeted.[18]

*Energy*. Between 1970 and 1996, spending on energy regulation has increased by 132 percent. (See Figure 3d.) In 1996, this category — which include four agencies — is projected to lose 12 percent (10 percent in current dollars) of its funding. Similarly, staffing will be cut by 1 percent. (See Figure 4d.)

Budget blueprints published the week of May 8, 1995, for both the House and Senate, are proposing big spending cuts for energy. The House budget plan would eliminate the Department of Energy entirely. Programs that are not eliminated by this proposal would be transferred to other agencies. The Senate would shrink, but not eliminate, the Energy Department.

### Economic Regulation

The other broad group of regulatory agencies, economic, has historically received less funding and fewer staffers than the social group. This analysis divides the economic group into three broad categories: finance and banking, industry-specific, and general business. As Table 1 shows, these agencies will receive a 3.4 percent boost in 1996, with the greatest amount of growth going to the general business agencies. In

real terms, however, economic regulatory agencies expect to receive only 0.4 percent more funding than in 1995. In contrast, staffing at these agencies will grow at a slightly faster clip than for the social programs, 1.0 percent. Table 2 gives detail on growth at these agencies.

*Finance and Banking*. Figure 3e reveals that the finance and banking category has grown considerably since 1970, expanding by 325 percent. There will be no expansion for these agencies in 1996, however. All six will experience real budget cuts.

While staffing is 209 percent higher at finance and banking agencies than in 1970, no new staff is being added in 1996. Three of the agencies will have the same number of personnel in 1996 as in 1995, while three will experience some attrition.

The Federal Deposit Insurance Corporation (FDIC), with a substantial budget decrease scheduled for 1996, will take on the duties of the Resolution Trust Corporation (RTC) in that year. The RTC is being phased out with 1995 as its last year of funding. FDIC and RTC will be merging two large scale functions involving personnel, assets and systems. There is significant downsizing of both corporations. RTC projects that about $8 billion of its existing inventory will not be sold during 1995 and will be transferred to RTC's successor, the Federal Deposit Insurance Corporation.[19] Typically when the budget of the FDIC is significantly reduced, lower anticipated bank failures is the reason given.

*Industry-Specific Regulation*. Since 1970, funding for the five industry-specific agencies has increased by 44 percent. Staffing for these agencies, on the other hand, has decreased by 12 percent during this time.

For 1996, funding for the five agencies in the industry-specific category is a mixed bag. The Federal Energy Regulatory Commission is slated for a cut of 11 percent of its budget and ten staff members. Neither the Federal Maritime Commission and the Interstate Commerce Commission will receive increased funding for 1996. As mentioned, the death of the ICC is finally drawing nearer. When Congress

deregulated the trucking and rail industries in 1980, ICC's days became numbered. Killing off this agency will complete the work begun 15 years ago.

In the 1996 *Budget*, the administration proposes to phase out the ICC entirely by April 1996. Severance liability will continue into fiscal year 1997, requiring additional appropriations after the agency is officially abolished.[20] ICC's functions will be distributed to the Transportation Department, the Justice Department, and the Federal Trade Commission. Under that scenario, the Department of Transportation would handle remaining motor carrier and rail regulatory activities, with the exception of rail merger review, which would be handled by the Department of Justice. Consumer complaints would be handled by the FTC. The House budget plan also recommends eliminating the ICC along with the Federal Maritime Commission.

Most of Federal Communications Commission's increased budget (a 11 percent increase in 1996) is for expenses related to the scheduled relocation of the Commission's headquarters in 1997.[21]

*General Business Regulation.* As can be seen in Figure 3g, the agencies which make up the general business category have, in total, seen increases of 216 percent since 1970. Staffing at this group of agencies has grown by 82 percent in the same time period. (See Figure 4g.)

Every agency except the Antitrust Division of the Department of Justice will experience real spending growth in 1996. The Securities and Exchange Commission and the Library of Congress's Copyright Office are scheduled for nearly 12 percent real growth. (See Table A-2.) Overall, this category's estimate for spending is up by 7 percent over 1995.

Table A-3 shows personnel numbers for general business regulatory agencies, which will rise to over 12,000 people in 1996 (3 percent increase over 1995 estimates). The Securities and Exchange Commission and the Export Administration will get the largest hikes in staffing, 7 percent and 14 percent, respectively.

Three agencies in this category are under the jurisdiction of the Commerce Department and will receive budget increases in 1996, according to the President's *Budget*. Although, preliminary plans set forth by the House and Senate budget committees would eliminate the entire department, the bulk of the department's functions would likely be shifted to other federal agencies.

Proposals to merge the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) have been advanced, frightening those involved in regulatory futures trading. The SEC oversees the stock markets while the CFTC has responsibility over the nation's derivatives market. Not too surprisingly, SEC Chairman Arthur Levitt has endorsed the proposed merger, but CFTC officials oppose it. CFTC Chairwoman Mary Schapiro cautioned that a merger could "unfavorably impact the nature and extent of attention devoted to the futures and options markets." Proponents believe that the markets will receive better oversight with a single regulator.[22] The President's *Budget* does not include a proposal to merge these agencies, both of which get large real increases in their budgets in 1996.

## Conclusion

Regulatory spending is accelerating from the lower rates of expansion witnessed at the outset of the Clinton administration, rising faster than it has since the early days of the Bush administration. Even with the public's call for less regulation, President Clinton's 1996 regulatory budget is the largest ever. It calls for $16.6 billion in federal regulatory spending, a 6 percent increase over estimated 1995 levels. Staffing is rising as well, but at a much slower 0.8 percent. The administration's talk about reinventing the regulatory system so far has not been translated into action.

## Notes

1. "Senate Thaws House Freeze," *Baltimore Sun*, April 7, 1995, p. 18A.
2. Peter A. Brown, "Poll Finds Support for Change; Some Say Congress Should Go Further," *The Plain Dealer* (Cleveland), April 14, 1995, p. 11A.
3. Christopher Georges, "House GOP Hopes to Cut Funding Used to Enforce Dozens of U.S. Regulations," *Wall Street Journal*, June 1, 1995, p. A18.
4. *Budget of the United States Government, Fiscal Year 1996* (Washington, D.C.: U.S. Government Printing Office, 1995), p. 161.
5. Martin Kasindorf, "Easing Rules in Prez' Goal," *Newsday*, March 17, 1995, p. A25.
6. Jeff Nesbitt, "Clinton Rides GOP Regulatory Bandwagon," *Washington Times*, March 17, 1995, p. B8.
7. Nesbitt, "Clinton Rides GOP Regulatory Bandwagon."
8. Murray Weidenbaum and Robert DeFina, *The Rising Cost of Government Regulation* (St. Louis, Mo.: Washington University, Center for the Study of American Business, 1977.)
9. Thomas Hopkins, *The Casts of Federal Regulation* (Washington, D.C.: The National Chamber Foundation, 1992), p. 5.
10. All inflation-adjusted numbers are expressed in constant 1987 dollars.
11. Staffing figures are not available for the Department of Housing and Urban Development's Consumer Protection Programs.
12. Testimony of Jolene M. Molitoris, Administrator of the Federal Railroad Administration before the Senate Subcommittee on Appropriations, Subcommittee on Transportation, *Federal News Service*, March 3, 1995.
13. Kirk Victor, "Up the Creek?" *National Journal*, April 8, 1995, p. 861.
14. "Labor Department: Senate Version of Rescissions Package Reduce DOL Budget by $1.6 Billion," *Daily Labor Report*, April 10, 1995.
15. "Substantial Increase in EEOC Budget is Unlikely to Survive GOP Congress," *BNA Pensions & Benefits Daily*, February 9, 1995.
16. "President Seeks $12 million Raise for PWBA Enforcement and Technology," *BNA Pensions & Benefits Daily*, February 7, 1995.
17. Construction grants are excluded when calculating the regulatory budget for the Environmental Protection Agency.
18. "House GOP Hopes to Cut Funding," p. A18.
19. Testimony of John J. Adair, Inspector General, Resolution Trust Corporation, before the Senate Appropriations VA, HUD, and Independent Agencies, FY96 VA, HUD Appropriations, March 3, 1995.
20. "Wolf Says Clinton's Cuts for ICC May Not Appease House Budget Cutters," *BNA Daily Report for Executives*, February 10, 1995, p. A28.
21. Testimony of Reed E. Hundt, Chairman of the Federal Communications Commission before the House Subcommittee on Commerce, Justice, and State, *Federal New Service*, March 22, 1995.
22. William B. Crawford, Jr., "Dukes Up Over CFTC-SEC Merger; Futures Leaders Fight Initiative on Capitol Hill, *Chicago Tribune*, April 3, 1995, p. C5.

## Appendix

Budget figures for the 55 major regulatory agencies shown in Table A-1 consist of obligations incurred by fiscal year. These expenditures are expressed in current dollars, rounded to the nearest million. Table A-2 provides comparable information in real terms (constant 1987 dollars).

Obligations are used to get a clear picture of how much a regulatory agency actually spends in a given year. Some agencies are funded, partly or totally, by fees collected from businesses and individuals. These fee structures have changed over the years. The "obligations" line in the appendix to the federal budget tells exactly what the agencies are expected to spend and does not deduct fees collected.

The staffing figures shown in Table A-3 are derived from the full-time equivalent employment numbers for each agency. Tables A-4, A-5, and A-6 give data from 1970 to 1996 for obligations incurred in current and constant dollars, and staffing, respectively. Because of space constraints, these data are provided in summary form, detailing only the social and economic totals as well as a grand total. Agency-by-agency data for the years 1970 through 1996 are available and can be obtained by writing to the Center for the Study of American Business. Please request the long tables for constant dollars, current dollars, or staffing.

Agencies that primarily perform taxation, subsidy, and credit functions are excluded from this report. Examples of these organizations are the Internal Revenue Service, the Commodity Credit Corporation, and the Federal Housing Administration. Agencies that administer federal contracts and procurement procedures are likewise not included.

The notes to the appendix give background on ways in which agencies have changed since the Center for the Study of American Business began tracking trends in regulatory budgets and staffing. For example, as note (1) indicates, the Agricultural Marketing Service was formerly Consumer and Marketing Service. Some agencies have been abolished while others have been created. These notes should help the reader make sense of name and other changes over the years.

Table A-1

## Costs of Federal Regulatory Agencies

(Fiscal Years, Millions of Current Dollars in "Obligations")

| Agency | 1970 | 1975 | 1980 | 1985 | 1990 | 1994 | (Estimated) 1995 | 1996 | % Change 1995-96 |
|---|---|---|---|---|---|---|---|---|---|
| **Social Regulation** | | | | | | | | | |
| **Consumer Safety and Health** | | | | | | | | | |
| Consumer Product Safety Commission | - | $37 | $43 | $36 | $35 | $43 | $44 | $45 | 2.3% |
| *Department of Agriculture:* | | | | | | | | | |
| Agricultural Marketing Service (1) | $190 | $99 | $67 | $157 | $160 | $206 | $199 | $210 | 5.5% |
| Animal and Plant Health Inspection Service (2) | 101 | 373 | 259 | 342 | 423 | 522 | 481 | 482 | 0.2% |
| Federal Grain Inspection Service (3) | - | - | 55 | 38 | 42 | 44 | 54 | 54 | 0.0% |
| Food Safety and Inspection Service (4) | - | - | 381 | 405 | 475 | 590 | 612 | 678 | 10.8% |
| Packers and Stockyards Admin. (5) | 3 | 5 | 8 | 8 | 10 | 12 | 12 | 13 | 8.3% |
| **Subtotal** | $294 | $477 | $770 | $950 | $1,110 | $1,374 | $1,358 | $1,437 | 5.8% |
| *Department of Health and Human Services:* | | | | | | | | | |
| Food and Drug Administration | 80 | 207 | 334 | 437 | 603 | 928 | 996 | 1,037 | 4.1% |
| *Department of Housing and Urban Development:* | | | | | | | | | |
| Consumer Protection Programs (6) | * | 2 | 4 | 7 | 6 | 9 | 9 | 10 | 11.1% |
| *Department of Justice:* | | | | | | | | | |
| Drug Enforcement Administration (7) | 2 | 12 | 13 | 18 | 28 | 48 | 58 | 62 | 6.9% |
| *Department of Transportation:* | | | | | | | | | |
| Coast Guard | $94 | $284 | $498 | $558 | $910 | $1,255 | $1,283 | $1,295 | 0.9% |
| Federal Aviation Administration | 126 | 196 | 281 | 294 | 495 | 583 | 593 | 640 | 7.9% |
| Federal Highway Administration | 6 | 15 | 20 | 33 | 98 | 130 | 150 | 159 | 6.0% |
| Federal Railroad Administration | 21 | 52 | 85 | 44 | 56 | 73 | 83 | 108 | 30.1% |
| National Highway Traffic Safety Administration | 32 | 104 | 136 | 114 | 142 | 191 | 208 | 230 | 10.6% |
| **Subtotal** | $279 | $651 | $1,020 | $1,043 | $1,701 | $2,232 | $2,317 | $2,432 | 5.0% |
| *Department of the Treasury (8):* | | | | | | | | | |
| Bureau of Alcohol, Tobacco and Firearms (9) | 50 | 95 | 144 | 173 | 282 | 399 | 402 | 411 | 2.2% |
| Chemical Safety and Hazard Investigation Board (10) | - | - | - | - | - | - | 1 | - | - |
| Federal Mine Safety and Health Review Comm. | - | - | 4 | 3 | 4 | 6 | 6 | 6 | 0.0% |
| National Transportation Safety Board | 5 | 10 | 17 | 22 | 27 | 37 | 37 | 39 | 5.4% |
| **TOTAL--Consumer Safety and Health** | $710 | $1,491 | $2,349 | $2,689 | $3,796 | $5,076 | $5,228 | $5,479 | 4.8% |
| **Job Safety and Other Working Conditions** | | | | | | | | | |
| *Department of Labor:* | | | | | | | | | |
| Employment Standards Administration (11) | $37 | $45 | $124 | $127 | $155 | $161 | $168 | $189 | 12.5% |
| Office of the American Workplace (12) | 12 | 29 | 55 | 57 | 79 | 27 | 32 | 42 | 31.3% |
| Pension and Welfare Benefits Admin. (13) | - | - | - | - | - | 64 | 70 | 82 | 17.1% |
| Mine Safety and Health Administration (14) | 27 | 67 | 144 | 150 | 167 | 194 | 201 | 212 | 5.5% |
| Occupational Safety and Health Admin. | - | 96 | 191 | 220 | 267 | 297 | 315 | 349 | 10.8% |
| **Subtotal** | $76 | $237 | $514 | $554 | $668 | $743 | $786 | $874 | 11.2% |
| Architectural and Transportation Barriers Compliance Board | - | - | - | 2 | 2 | 3 | 3 | 4 | 33.3% |
| Equal Employment Opportunity Commission | 13 | 55 | 124 | 163 | 185 | 230 | 233 | 268 | 15.0% |
| National Labor Relations Board | 39 | 62 | 108 | 137 | 141 | 171 | 176 | 181 | 2.8% |

Table A-1 (continued)

| Agency | 1970 | 1975 | 1980 | 1985 | 1990 | 1994 | (Estimated) 1995 | 1996 | % Change 1995-96 |
|---|---|---|---|---|---|---|---|---|---|
| Occupational Safety and Health Review Commission | - | 5 | 7 | 6 | 6 | 7 | 8 | 8 | 0.0% |
| **TOTAL—Job Safety and Other Working Conditions** | $128 | $359 | $753 | $862 | $1,002 | $1,154 | $1,206 | $1,335 | 10.7% |
| **Environment** | | | | | | | | | |
| Council on Environmental Quality | * | $3 | $8 | $1 | $1 | $1 | $1 | $2 | 100.0% |
| *Department of Defense:* | | | | | | | | | |
| Army Corps of Engineers (15) | 2 | 20 | 41 | 54 | 64 | 92 | 101 | 112 | 10.9% |
| *Department of Interior:* | | | | | | | | | |
| Fish and Wildlife Service (16) | 7 | 24 | 68 | 90 | 159 | 296 | 349 | 347 | -0.6% |
| Office of Surface Mining Reclamation and Enforcement (17) | - | - | 174 | 422 | 346 | 377 | 352 | 363 | 3.1% |
| Subtotal | $7 | $24 | $242 | $512 | $505 | $673 | $701 | $710 | 1.3% |
| Environmental Protection Agency (18) | 205 | 794 | 1,360 | 1,928 | 3,594 | 4,466 | 4,557 | 5,096 | 11.8% |
| **TOTAL – Environment** | $214 | $841 | $1,651 | $2,495 | $4,164 | $5,232 | $5,360 | $5,920 | 10.4% |
| **Energy** | | | | | | | | | |
| Department of Energy: | | | | | | | | | |
| Economic Regulatory Administration (19) | - | $127 | $146 | $24 | $17 | $12 | $15 | $11 | -26.7% |
| Petroleum Regulation | - | - | - | 12 | 11 | 15 | 16 | 18 | 12.5% |
| Federal Inspector for the Alaska Natural Gas Pipeline (20) | - | - | 8 | * | * | - | * | - | - |
| Subtotal | - | $127 | $154 | $36 | $28 | $27 | $31 | $29 | -6.5% |
| Nuclear Regulatory Commission (21) | 64 | 148 | 396 | 445 | 434 | 541 | 592 | 534 | -9.8% |
| **TOTAL—Energy** | $64 | $275 | $550 | $481 | $462 | $568 | $623 | $563 | -9.6% |
| **TOTAL SOCIAL REGULATION** | $1,116 | $2,966 | $5,303 | $6,527 | $9,424 | $12,030 | $12,417 | $13,297 | 7.1% |
| | | | | **Economic Regulation** | | | | | |
| **Finance and Banking (22)** | | | | | | | | | |
| *Department of the Treasury:* | | | | | | | | | |
| Comptroller of the Currency | $32 | $65 | $113 | $170 | $261 | $376 | $391 | $386 | -1.3% |
| Farm Credit Administration | 4 | 6 | 12 | 20 | 36 | 42 | 41 | 40 | -2.4% |
| Federal Deposit Insurance Corporation | 38 | 63 | 113 | 232 | 495 | 382 | 462 | 422 | -8.7% |
| Federal Reserve System (23) | | | | | | | | | |
| Federal Reserve Banks | n/a | n/a | 86 | 152 | 212 | 360 | 395 | 395 | 0.0% |
| Federal Reserve System Board of Governors | 5 | 7 | 20 | 28 | 30 | 63 | 69 | 69 | 0.0% |
| Subtotal | $5 | $7 | $106 | $180 | $242 | $423 | $464 | $464 | 0.0% |
| National Credit Union Administration | 7 | 10 | 18 | 22 | 46 | 67 | 71 | 72 | 1.4% |
| **TOTAL—Finance and Banking** | $86 | $151 | $362 | $624 | $1,080 | $1,290 | $1,429 | $1,384 | -3.1% |
| **Industry-Specific Regulation** | | | | | | | | | |
| Civil Aeronautics Board (24) | $11 | $18 | $29 | $5 | - | - | - | - | - |
| Commodity Futures Trading Commission (25) | 2 | 3 | 17 | 28 | 39 | 47 | 49 | 60 | 22.4% |
| Federal Communications Commission | 25 | 47 | 76 | 96 | 108 | 173 | 197 | 224 | 13.7% |

Table A-1 (continued)

| Agency | 1970 | 1975 | 1980 | 1985 | 1990 | 1994 | (Estimated) 1995 | 1996 | % Change 1995-96 |
|---|---|---|---|---|---|---|---|---|---|
| Federal Energy Regulatory Commission (26) | 18 | 33 | 68 | 98 | 114 | 162 | 166 | 152 | -8.4% |
| Federal Maritime Commission | 4 | 7 | 11 | 12 | 15 | 19 | 19 | 19 | 0.0% |
| Interstate Commerce Commission (27) | 27 | 47 | 78 | 50 | 44 | 53 | 42 | 42 | 0.0% |
| Renegotiation Board (28) | 4 | 5 | - | - | - | - | - | - | - |
| **TOTAL–Industry-Specific Regulation** | $91 | $160 | $279 | $289 | $320 | $454 | $473 | $497 | 5.1% |
| **General Business** | | | | | | | | | |
| Cost Accounting Standards Board (29) | - | $1 | $1 | - | - | - | - | - | - |
| Council on Wage and Price Stability (30) | - | 1 | 9 | - | - | - | - | - | - |
| *Department of Commerce:* | | | | | | | | | |
| International Trade Administration (31) | 6 | 9 | 16 | 38 | 20 | 33 | 30 | 31 | 3.3% |
| Export Administration (32) | - | - | - | - | 43 | 40 | 45 | 49 | 8.9% |
| Patent and Trademark Office | 49 | 78 | 105 | 200 | 327 | 531 | 580 | 643 | 10.9% |
| Subtotal | $55 | $87 | $121 | $238 | $390 | $604 | $655 | $723 | 10.4% |
| *Department of Justice:* | | | | | | | | | |
| Antitrust Division | 10 | 18 | 49 | 43 | 48 | 72 | 89 | 91 | 2.2% |
| Federal Election Commission | - | - | 9 | 13 | 15 | 24 | 27 | 29 | 7.4% |
| Federal Trade Commission | 21 | 39 | 66 | 66 | 70 | 94 | 104 | 108 | 3.8% |
| International Trade Commission (33) | 4 | 9 | 14 | 25 | 38 | 43 | 45 | 47 | 4.4% |
| *Library of Congress:* | | | | | | | | | |
| Copyright Office | 3 | 6 | 14 | 17 | 20 | 25 | 27 | 31 | 14.8% |
| Securities and Exchange Commission | 22 | 45 | 72 | 105 | 162 | 266 | 303 | 348 | 14.9% |
| **TOTAL–General Business** | $115 | $206 | $355 | $507 | $743 | $1,128 | $1,250 | $1,377 | 10.2% |
| **TOTAL ECONOMIC REGULATION** | $292 | $517 | $996 | $1,420 | $2,143 | $2,872 | $3,152 | $3,258 | 3.4% |
| ***GRAND TOTAL*** | $1,408 | $3,483 | $6,299 | $7,947 | $11,567 | $14,902 | $15,569 | $16,555 | 6.3% |

Notes:
* = less than $500,000
- = agency not operational
n/a = not available
(1) through (33): see notes at the end of the Appendix

Source: Center for the Study of American Business, Washington University. Derived from the Budget of the United States Government and related documents, various fiscal years.

Table A-2

## Costs of Federal Regulatory Agencies

(Fiscal Years, Millions of Current 1987 Dollars in "Obligations")

| Agency | 1970 | 1975 | 1980 | 1985 | 1990 | 1994 | (Estimated) 1995 | 1996 | % Change 1995-96 |
|---|---|---|---|---|---|---|---|---|---|
| **Social Regulation** | | | | | | | | | |
| **Consumer Safety and Health** | | | | | | | | | |
| Consumer Product Safety Commission | - | $75 | $60 | $38 | $31 | $34 | $34 | $34 | -0.6% |
| *Department of Agriculture:* | | | | | | | | | |
| Agricultural Marketing Service (1) | $540 | $201 | $93 | $166 | $141 | $163 | $153 | $157 | 2.5% |
| Animal and Plant Health Inspection Service (2) | 287 | 758 | 361 | 362 | 374 | 414 | 371 | 361 | -2.6% |
| Federal Grain Inspection Service (3) | - | - | 77 | 40 | 37 | 35 | 42 | 40 | -2.8% |
| Food Safety and Inspection Service (4) | - | - | 531 | 429 | 420 | 468 | 472 | 508 | 7.6% |
| Packers and Stockyards Admin. (5) | 9 | 10 | 11 | 8 | 9 | 10 | 9 | 10 | 5.2% |
| **Subtotal** | $835 | $970 | $1,074 | $1,006 | $981 | $1,089 | $1,047 | $1,076 | 2.8% |
| *Department of Health and Human Services:* | | | | | | | | | |
| Food and Drug Administration | 227 | 421 | 466 | 463 | 533 | 735 | 768 | 777 | 1.2% |
| *Department of Housing and Urban Development:* | | | | | | | | | |
| Consumer Protection Programs (6) | - | 4 | 6 | 7 | 5 | 7 | 7 | 7 | 7.9% |
| *Department of Justice:* | | | | | | | | | |
| Drug Enforcement Administration (7) | 6 | 24 | 18 | 19 | 25 | 38 | 45 | 46 | 3.9% |
| *Department of Transportation:* | | | | | | | | | |
| Coast Guard | 267 | 577 | 695 | 591 | 804 | 994 | 989 | 970 | -1.9% |
| Federal Aviation Administration | 358 | 398 | 392 | 311 | 437 | 462 | 457 | 479 | 4.9% |
| Federal Highway Administration | 17 | 30 | 28 | 35 | 87 | 103 | 116 | 119 | 3.0% |
| Federal Railroad Administration | 60 | 106 | 119 | 47 | 49 | 58 | 64 | 81 | 26.4% |
| National Highway Traffic Safety Administration | 91 | 211 | 190 | 121 | 125 | 151 | 160 | 172 | 7.4% |
| **Subtotal** | $793 | $1,323 | $1,423 | $1,105 | $1,503 | $1,769 | $1,786 | $1,822 | 2.0% |
| *Department of the Treasury (8):* | | | | | | | | | |
| Bureau of Alcohol, Tobacco and Firearms (9) | 142 | 193 | 201 | 183 | 249 | 316 | 310 | 308 | -0.7% |
| Chemical Safety and Hazard Investigation Board (10) | - | - | - | - | - | - | 1 | - | - |
| Federal Mine Safety and Health Review Comm. | - | - | 6 | 3 | 4 | 5 | 5 | 4 | -2.8% |
| National Transportation Safety Board | 14 | 20 | 24 | 23 | 24 | 29 | 29 | 29 | 2.4% |
| **TOTAL–Consumer Safety and Health** | 2,017 | 3,030 | 3,276 | 2,849 | 3,353 | 4,022 | 4,031 | 4,104 | 1.8% |
| **Job Safety and Other Working Conditions** | | | | | | | | | |
| *Department of Labor:* | | | | | | | | | |
| Employment Standards Administration (11) | $105 | $91 | $173 | $135 | $137 | $128 | $130 | $142 | 9.3% |
| Office of the American Workplace (12) | 34 | 59 | 77 | 60 | 70 | 21 | 25 | 31 | 27.5% |
| Pension and Welfare Benefits Admin. (13) | 0 | 0 | 0 | 0 | 0 | 51 | 54 | 61 | 13.8% |
| Mine Safety and Health Administration (14) | 77 | 136 | 201 | 159 | 148 | 154 | 155 | 159 | 2.5% |
| Occupational Safety and Health Admin. | 0 | 195 | 266 | 233 | 236 | 235 | 243 | 261 | 7.6% |
| **Subtotal** | $216 | $482 | $717 | $587 | $590 | $589 | $606 | $655 | 8.0% |
| Architectural and Transportation Barriers Compliance Board | - | - | - | 2 | 2 | 2 | 2 | 3 | 29.5% |
| Equal Employment Opportunity Commission | 37 | 112 | 173 | 173 | 163 | 182 | 180 | 201 | 11.7% |
| National Labor Relations Board | 111 | 126 | 151 | 145 | 125 | 135 | 136 | 136 | -0.1% |

Table A-2 (continued)

| Agency | 1970 | 1975 | 1980 | 1985 | 1990 | 1994 | (Estimated) 1995 | 1996 | % Change 1995-96 |
|---|---|---|---|---|---|---|---|---|---|
| Occupational Safety and Health Review Commission | 0 | 10 | 10 | 6 | 5 | 6 | 6 | 6 | -2.8% |
| **TOTAL—Job Safety and Other Working Conditions** | $364 | $730 | $1,050 | $913 | $885 | $914 | $930 | $1,000 | 7.5% |
| **Environment** | | | | | | | | | |
| Council on Environmental Quality | 0 | 6 | 11 | 1 | 1 | 1 | 1 | 1 | 94.3% |
| *Department of Defense:* | | | | | | | | | |
| Army Corps of Engineers (15) | 6 | 41 | 57 | 57 | 57 | 73 | 78 | 84 | 7.7% |
| *Department of Interior:* | | | | | | | | | |
| Fish and Wildlife Service (16) | 20 | 49 | 95 | 95 | 140 | 235 | 269 | 260 | -3.4% |
| Office of Surface Mining Reclamation and Enforcement (17) | 0 | 0 | 243 | 447 | 306 | 299 | 271 | 272 | 0.2% |
| **Subtotal** | $20 | $49 | $338 | $542 | $446 | $533 | $540 | $532 | -1.6% |
| Environmental Protection Agency (18) | 582 | 1,614 | 1,897 | 2,042 | 3,175 | 3,539 | 3,513 | 3,817 | 8.6% |
| **TOTAL – Environment** | $608 | $1,709 | $2,303 | $2,643 | $3,678 | $4,146 | $4,133 | $4,434 | 7.3% |
| **Energy** | | | | | | | | | |
| Department of Energy: | | | | | | | | | |
| Economic Regulatory Administration (19) | - | 258 | 204 | 25 | 15 | 10 | 12 | 8 | -28.8% |
| Petroleum Regulation | - | - | - | 13 | 10 | 12 | 12 | 13 | 9.3% |
| Federal Inspector for the Alaska Natural Gas Pipeline (20) | 0 | - | 11 | - | - | - | - | - | - |
| **Subtotal** | 0 | 258 | 215 | 38 | 25 | 21 | 24 | 22 | -9.1% |
| Nuclear Regulatory Commission (21) | 182 | 301 | 552 | 471 | 383 | 429 | 456 | 400 | -12.4% |
| **TOTAL—Energy** | $182 | $559 | $767 | $510 | $408 | $450 | $480 | $422 | -12.2% |
| TOTAL SOCIAL REGULATION | $3,170 | $6,028 | $7,396 | $6,914 | $8,325 | $9,532 | $9,574 | $9,960 | 4.0% |
| | | | | Economic Regulation | | | | | |
| **Finance and Banking (22)** | | | | | | | | | |
| *Department of the Treasury:* | | | | | | | | | |
| Comptroller of the Currency | 91 | 132 | 158 | 180 | 231 | 298 | 301 | 289 | -4.1% |
| Farm Credit Administration | 11 | 12 | 17 | 21 | 32 | 33 | 32 | 30 | -5.2% |
| Federal Deposit Insurance Corporation | 108 | 128 | 158 | 246 | 437 | 303 | 356 | 316 | -11.3% |
| Federal Reserve System (23) | | | | | | | | | |
| Federal Reserve Banks | 0 | 0 | 120 | 161 | 187 | 285 | 305 | 296 | -2.8% |
| Federal Reserve System Board of Governors | 14 | 14 | 28 | 30 | 27 | 50 | 53 | 52 | -2.8% |
| **Subtotal** | $14 | $14 | $148 | $191 | $214 | $335 | $358 | $348 | -2.8% |
| National Credit Union Administration | 20 | 20 | 25 | 23 | 41 | 53 | 55 | 54 | -1.5% |
| **TOTAL—Finance and Banking** | $244 | $307 | $505 | $661 | $954 | $1,022 | $1,102 | $1,037 | -5.9% |
| **Industry-Specific Regulation** | | | | | | | | | |
| Civil Aeronautics Board (24) | 31 | 37 | 40 | 5 | - | - | - | - | - |
| Commodity Futures Trading Commission (25) | 6 | 6 | 24 | 30 | 34 | 37 | 38 | 45 | 19.0% |
| Federal Communications Commission | 71 | 96 | 106 | 102 | 95 | 137 | 152 | 168 | 10.5% |

Table A-2 (continued)

| Agency | 1970 | 1975 | 1980 | 1985 | 1990 | 1994 | (Estimated) 1995 | 1996 | % Change 1995-96 |
|---|---|---|---|---|---|---|---|---|---|
| Federal Energy Regulatory Commission (26) | 51 | 67 | 95 | 104 | 101 | 128 | 128 | 114 | -11.0% |
| Federal Maritime Commission | 11 | 14 | 15 | 13 | 13 | 15 | 15 | 14 | -2.8% |
| Interstate Commerce Commission (27) | 77 | 96 | 109 | 53 | 39 | 42 | 32 | 31 | -2.8% |
| Renegotiation Board (28) | 11 | 10 | - | - | - | - | - | - | - |
| **TOTAL–Industry-Specific Regulation** | 259 | 325 | 389 | 306 | 283 | 360 | 365 | 372 | 2.1% |
| **General Business** | | | | | | | | | |
| Cost Accounting Standards Board (29) | 0 | 2 | 1 | - | - | - | - | - | - |
| Council on Wage and Price Stability (30) | 0 | 2 | 13 | - | - | - | - | - | - |
| *Department of Commerce:* | | | | | | | | | |
| International Trade Administration (31) | 17 | 18 | 22 | 40 | 18 | 26 | 23 | 23 | 0.4% |
| Export Administration (32) | 0 | 0 | 0 | 0 | 38 | 32 | 35 | 37 | 5.8% |
| Patent and Trademark Office | 139 | 159 | 146 | 212 | 289 | 421 | 447 | 482 | 7.7% |
| Subtotal | $156 | $177 | $169 | $252 | $345 | $479 | $505 | $542 | 7.2% |
| *Department of Justice:* | | | | | | | | | |
| Antitrust Division | 28 | 37 | 68 | 46 | 42 | 57 | 69 | 68 | -0.7% |
| Federal Election Commission | 0 | 0 | 13 | 14 | 13 | 19 | 21 | 22 | 4.4% |
| Federal Trade Commission | 60 | 79 | 92 | 70 | 62 | 74 | 80 | 81 | 0.9% |
| International Trade Commission (33) | 11 | 18 | 20 | 26 | 34 | 34 | 35 | 35 | 1.5% |
| *Library of Congress:* | | | | | | | | | |
| Copyright Office | 9 | 12 | 20 | 18 | 18 | 20 | 21 | 23 | 11.5% |
| Securities and Exchange Commission | 63 | 91 | 100 | 111 | 143 | 211 | 234 | 261 | 11.6% |
| **TOTAL–General Business** | $327 | $419 | $495 | $537 | $656 | $894 | $964 | $1,031 | 7.0% |
| TOTAL ECONOMIC REGULATION | $830 | $1,051 | $1,389 | $1,504 | $1,893 | $2,276 | $2,430 | $2,440 | 0.4% |
| ***GRAND TOTAL*** | $4,000 | $7,079 | $8,785 | $8,418 | $10,218 | $11,808 | $12,004 | $12,401 | 3.3% |

Notes:
* = less than $500,000
- = agency not operational
n/a = not available
(1) through (33): see notes at the end of the Appendix

Source: Center for the Study of American Business, Washington University. Derived from the Budget of the United States Government and related documents, various fiscal years.

Table A-3

## Staffing of Federal Regulatory Agencies
(Fiscal Years, Full-time Equivalent Employment)

| Agency | 1970 | 1975 | 1980 | 1985 | 1990 | 1994 | (Estimated) 1995 | 1996 | % Change 1995-96 |
|---|---|---|---|---|---|---|---|---|---|
| **Social Regulation** | | | | | | | | | |
| **Consumer Safety and Health** | | | | | | | | | |
| Consumer Product Safety Commission | - | 1,028 | 978 | 573 | 515 | 485 | 487 | 487 | 0.0% |
| *Department of Agriculture:* | | | | | | | | | |
| Agricultural Marketing Service (1) | 12,873 | 4,303 | 2,147 | 3,247 | 3,164 | 3,334 | 3,138 | 3,133 | -0.2% |
| Animal and Plant Health Inspection Service (2) | 5,635 | 14,657 | 5,440 | 4,812 | 5,814 | 6,609 | 6,387 | 6,259 | -2.0% |
| Federal Grain Inspection Service (3) | - | - | 1,886 | 846 | 802 | 701 | 705 | 692 | -1.8% |
| Food Safety and Inspection Service (4) | - | - | 12,501 | 9,719 | 9,433 | 9,885 | 10,183 | 10,581 | 3.9% |
| Packers and Stockyards Admin. (5) | 193 | 189 | 232 | 187 | 187 | 174 | 180 | 188 | 4.4% |
| **Subtotal** | 18,701 | 19,149 | 22,206 | 18,811 | 19,400 | 20,703 | 20,593 | 20,853 | 1.3% |
| *Department of Health and Human Services:* | | | | | | | | | |
| Food and Drug Administration | 4,470 | 6,379 | 8,045 | 7,156 | 7,764 | 9,194 | 9,393 | 9,475 | 0.9% |
| *Department of Justice:* | | | | | | | | | |
| Drug Enforcement Administration (7) | 125 | 345 | 256 | 220 | 294 | 525 | 536 | 591 | 10.3% |
| *Department of Transportation:* | | | | | | | | | |
| Coast Guard | 7,064 | 12,323 | 11,423 | 9,163 | 10,852 | 14,839 | 14,833 | 14,538 | 3.8% |
| Federal Aviation Administration | 6,447 | 6,534 | 6,251 | 4,403 | 5,640 | 5,904 | 5,788 | 6,007 | -2.7% |
| Federal Highway Administration | 177 | 235 | 239 | 248 | 495 | 664 | 665 | 647 | -2.7% |
| Federal Railroad Administration | 267 | 412 | 607 | 448 | 435 | 535 | 565 | 563 | -0.4% |
| National Highway Traffic Safety Administration | 472 | 802 | 917 | 664 | 602 | 678 | 668 | 653 | -2.2% |
| **Subtotal** | 14,427 | 20,306 | 19,437 | 14,926 | 18,024 | 22,620 | 22,519 | 22,408 | -0.5% |
| *Department of the Treasury (8):* | | | | | | | | | |
| Bureau of Alcohol, Tobacco and Firearms (9) | 3,489 | 3,742 | 3,819 | 2,982 | 3,873 | 4,258 | 4,210 | 4,168 | -1.0% |
| Chemical Safety and Hazard Investigation Board (10) | - | - | - | - | - | - | 2 | - | -100.0% |
| Federal Mine Safety and Health Review Comm. | - | - | 85 | 52 | 48 | 53 | 60 | 60 | 0.0% |
| National Transportation Safety Board | 251 | 288 | 387 | 336 | 325 | 356 | 350 | 350 | 0.0% |
| **TOTAL—Consumer Safety and Health** | 41,463 | 51,237 | 55,213 | 45,056 | 50,243 | 58,194 | 58,150 | 58,392 | 0.4% |
| **Job Safety and Other Working Conditions** | | | | | | | | | |
| *Department of Labor:* | | | | | | | | | |
| Employment Standards Administration (11) | 1,961 | 1,715 | 3,372 | 2,307 | 2,335 | 2,035 | 2,122 | 2,273 | 7.1% |
| Office of the American Workplace (12) | 626 | 1,102 | 1,330 | 979 | 980 | 391 | 400 | 394 | -1.5% |
| Pension and Welfare Benefits Admin. (13) | - | - | - | - | - | 575 | 621 | 608 | -2.1% |
| Mine Safety and Health Administration (14) | 1,040 | 2,800 | 3,700 | 2,964 | 2,679 | 2,518 | 2,521 | 2,521 | 0.0% |
| Occupational Safety and Health Admin. | - | 1,910 | 2,950 | 2,205 | 2,431 | 2,295 | 2,323 | 2,324 | 0.0% |
| **Subtotal** | 3,627 | 7,527 | 11,352 | 8,455 | 8,425 | 7,814 | 7,987 | 8,120 | 1.7% |
| Architectural and Transportation Barriers Compliance Board | - | - | - | 26 | 27 | 35 | 36 | 36 | 0.0% |
| Equal Employment Opportunity Commission | 637 | 2,218 | 3,496 | 3,097 | 2,853 | 2,832 | 2,860 | 3,219 | 12.6% |
| National Labor Relations Board | 2,222 | 2,427 | 2,898 | 2,571 | 2,227 | 2,063 | 2,054 | 2,116 | 3.0% |

Table A-3 (continued)

| Agency | 1970 | 1975 | 1980 | 1985 | 1990 | 1994 | (Estimated) 1995 | 1996 | % Change 1995-96 |
|---|---|---|---|---|---|---|---|---|---|
| Occupational Safety and Health Review Commission | - | 162 | 148 | 80 | 78 | 73 | 75 | 74 | -1.3% |
| **TOTAL–Job Safety and Other Working Conditions** | 6,486 | 12,334 | 17,894 | 14,229 | 13,610 | 12,817 | 13,012 | 13,565 | 4.2% |
| **Environment** | | | | | | | | | |
| Council on Environmental Quality | n/a | 60 | 49 | 11 | 15 | 3 | 10 | 20 | 100.0% |
| *Department of Defense:* | | | | | | | | | |
| Army Corps of Engineers (15) | n/a | 546 | 800 | 905 | 1,201 | 1,389 | 1,390 | 1,409 | 1.4% |
| *Department of Interior:* | | | | | | | | | |
| Fish and Wildlife Service (16) | 432 | 861 | 1,913 | 1,437 | 2,059 | 3,014 | 3,253 | 3,238 | -0.5% |
| Office of Surface Mining Reclamation and Enforcement (17) | - | - | 1,186 | 1,111 | 1,195 | 997 | 989 | 951 | -3.8% |
| **Subtotal** | 432 | 861 | 3,099 | 2,548 | 3,254 | 4,011 | 4,242 | 4,189 | -1.2% |
| Environmental Protection Agency (18) | 4,093 | 10,440 | 13,045 | 12,590 | 15,587 | 17,414 | 18,664 | 18,615 | -0.3% |
| **TOTAL – Environment** | 4,525 | 11,907 | 16,993 | 16,054 | 20,057 | 22,817 | 24,306 | 24,233 | -0.3% |
| **Energy** | | | | | | | | | |
| Department of Energy: | | | | | | | | | |
| Economic Regulatory Administration (19) | - | 3,148 | 2,255 | 350 | 184 | 135 | 130 | 110 | -15.4% |
| Petroleum Regulation | - | - | - | 105 | 96 | 106 | 107 | 123 | 15.0% |
| Federal Inspector for the Alaska Natural Gas Pipeline (20) | - | - | 64 | 1 | 1 | - | - | - | - |
| **Subtotal** | - | 3,148 | 2,319 | 456 | 281 | 241 | 237 | 233 | -1.7% |
| Nuclear Regulatory Commission (21) | 219 | 1,897 | 3,114 | 3,498 | 3,160 | 3,240 | 3,174 | 3,141 | -1.0% |
| **TOTAL–Energy** | 219 | 5,045 | 5,433 | 3,954 | 3,441 | 3,481 | 3,411 | 3,374 | -1.1% |
| **TOTAL SOCIAL REGULATION** | 52,693 | 80,523 | 95,533 | 79,293 | 87,351 | 97,309 | 98,879 | 99,564 | 0.7% |
| | | | | | **Economic Regulation** | | | | |
| **Finance and Banking (22)** | | | | | | | | | |
| *Department of the Treasury:* | | | | | | | | | |
| Comptroller of the Currency | 2,003 | 2,660 | 3,234 | 2,913 | 3,216 | 3,966 | 3,859 | 3,800 | -1.5% |
| Farm Credit Administration | 222 | 211 | 277 | 296 | 530 | 425 | 404 | 390 | -3.5% |
| Federal Deposit Insurance Corporation | 2,185 | 2,817 | 3,648 | 2,921 | 6,005 | 7,032 | 6,688 | 6,625 | -0.9% |
| Federal Reserve System (23) | | | | | | | | | |
| Federal Reserve Banks | n/a | n/a | 1,589 | 1,912 | 2,217 | 3,080 | 3,161 | 3,161 | 0.0% |
| Federal Reserve System Board of Governors | 170 | 303 | 333 | 419 | 419 | 657 | 657 | 657 | 0.0% |
| **Subtotal** | 170 | 303 | 1,922 | 2,331 | 2,636 | 3,737 | 3,818 | 3,818 | 0.0% |
| National Credit Union Administration | 389 | 410 | 443 | 403 | 662 | 728 | 735 | 735 | 0.0% |
| **TOTAL–Finance and Banking** | 4,969 | 6,401 | 9,524 | 8,864 | 13,049 | 15,544 | 15,441 | 15,368 | -0.5% |
| **Industry-Specific Regulation** | | | | | | | | | |
| Civil Aeronautics Board (24) | 658 | 717 | 778 | 90 | - | - | - | - | - |
| Commodity Futures Trading Commission (25) | 166 | 497 | 459 | 512 | 527 | 543 | 545 | 627 | 15.0% |
| Federal Communications Commission | 1,511 | 2,005 | 2,216 | 1,939 | 1,734 | 1,831 | 2,271 | 2,271 | 0.0% |

Table A-3 (continued)

| Agency | 1970 | 1975 | 1980 | 1985 | 1990 | 1994 | (Estimated) 1995 | 1996 | % Change 1995-96 |
|---|---|---|---|---|---|---|---|---|---|
| Federal Energy Regulatory Commission (26) | 1,095 | 1,314 | 1,653 | 1,617 | 1,475 | 1,434 | 1,463 | 1,453 | -0.7% |
| Federal Maritime Commission | 226 | 303 | 336 | 224 | 229 | 199 | 205 | 201 | -2.0% |
| Interstate Commerce Commission (27) | 1,802 | 1,986 | 2,041 | 914 | 664 | 608 | 428 | 428 | 0.0% |
| Renegotiation Board (28) | 217 | 191 | - | - | - | - | - | - | - |
| **TOTAL–Industry-Specific Regulation** | 5,675 | 7,013 | 7,483 | 5,296 | 4,629 | 4,615 | 4,912 | 4,980 | 1.4% |
| **General Business** | | | | | | | | | |
| Cost Accounting Standards Board (29) | - | 37 | 21 | - | - | - | - | - | - |
| Council on Wage and Price Stability (30) | - | 17 | 230 | - | - | - | - | - | - |
| *Department of Commerce:* | | | | | | | | | |
| International Trade Administration (31) | 247 | 279 | 335 | 552 | 238 | 278 | 232 | 229 | -1.3% |
| Export Administration (32) | - | - | - | - | 508 | 379 | 325 | 370 | 13.8% |
| Patent and Trademark Office | 2,569 | 2,960 | 2,660 | 3,150 | 4,059 | 4,977 | 5,075 | 5,137 | 1.2% |
| Subtotal | 2,816 | 3,239 | 2,995 | 3,702 | 4,805 | 5,634 | 5,632 | 5,736 | 1.8% |
| *Department of Justice:* | | | | | | | | | |
| Antitrust Division | 544 | 676 | 971 | 631 | 513 | 634 | 834 | 834 | 0.0% |
| Federal Election Commission | - | 62 | 258 | 242 | 241 | 292 | 327 | 337 | 3.1% |
| Federal Trade Commission | 1,302 | 1,616 | 1,719 | 1,201 | 903 | 933 | 979 | 979 | 0.0% |
| International Trade Commission (33) | 245 | 368 | 409 | 490 | 499 | 455 | 454 | 457 | 0.7% |
| *Library of Congress:* | | | | | | | | | |
| Copyright Office | 314 | 374 | 598 | 533 | 520 | 498 | 527 | 525 | -0.4% |
| Securities and Exchange Commission | 1,388 | 1,917 | 2,050 | 1,940 | 2,130 | 2,652 | 2,944 | 3,139 | 6.6% |
| **TOTAL–General Business** | 6,609 | 8,306 | 9,251 | 8,739 | 9,611 | 11,098 | 11,697 | 12,007 | 2.7% |
| **TOTAL ECONOMIC REGULATION** | 17,253 | 21,720 | 26,258 | 22,899 | 27,289 | 31,257 | 32,050 | 32,355 | 1.0% |
| ***GRAND TOTAL*** | 69,946 | 102,243 | 121,791 | 102,192 | 114,640 | 128,566 | 130,929 | 131,919 | 0.8% |

Notes:
* = less than $500,000
- = agency not operational
n/a = not available
(1) through (33): see notes at the end of the Appendix

Source: Center for the Study of American Business, Washington University. Derived from the Budget of the United States Government and related documents, various fiscal years.

Table A-4

**Summary of Federal Regulatory Spending, 1970-1996**
(Fiscal Years, Millions of Current Dollars)

| Year | Social Regulation | Economic Regulation | Total |
|---|---|---|---|
| 1970 | $1,116 | $292 | $1,408 |
| 1971 | 1,407 | 324 | 1,731 |
| 1972 | 1,784 | 360 | 2,144 |
| 1973 | 2,339 | 388 | 2,727 |
| 1974 | 2,431 | 439 | 2,870 |
| 1975 | 2,966 | 517 | 3,483 |
| 1976 | 3,048 | 589 | 3,637 |
| 1977 | 3,555 | 721 | 4,276 |
| 1978 | 4,014 | 812 | 4,826 |
| 1979 | 4,681 | 880 | 5,561 |
| 1980 | 5,303 | 996 | 6,299 |
| 1981 | 5,493 | 1,066 | 6,559 |
| 1982 | 5,516 | 1,100 | 6,616 |
| 1983 | 5,550 | 1,124 | 6,674 |
| 1984 | 6,090 | 1,401 | 7,491 |
| 1985 | 6,527 | 1,420 | 7,947 |
| 1986 | 6,294 | 1,688 | 7,982 |
| 1987 | 7,356 | 1,637 | 8,993 |
| 1988 | 7,931 | 2,004 | 9,935 |
| 1989 | 8,503 | 2,062 | 10,565 |
| 1990 | 9,424 | 2,143 | 11,567 |
| 1991 | 10,231 | 2,173 | 12,404 |
| 1992 | 11,210 | 2,660 | 13,870 |
| 1993 | 11,544 | 3,135 | 14,679 |
| 1994 | 12,030 | 2,872 | 14,902 |
| 1995* | 12,417 | 3,152 | 15,569 |
| 1996* | 13,297 | 3,258 | 16,555 |

*Estimates

Note: Data are based on obligations incurred.

Source: Center for the Study of American Business, Washington University. Derived from the Budget of the United States Government and related documents, various fiscal years.

Table A-5

**Summary of Federal Regulatory Spending, 1970-1996**
(Fiscal Years, Millions of Constant 1987 Dollars)

| Year | Social Regulation | Economic Regulation | Total |
|---|---|---|---|
| 1970 | $3,170 | $830 | $4,000 |
| 1971 | 3,792 | 873 | 4,666 |
| 1972 | 4,598 | 928 | 5,526 |
| 1973 | 5,663 | 939 | 6,603 |
| 1974 | 5,414 | 978 | 6,392 |
| 1975 | 6,028 | 1,051 | 7,079 |
| 1976 | 5,828 | 1,126 | 6,954 |
| 1977 | 6,360 | 1,290 | 7,649 |
| 1978 | 6,657 | 1,347 | 8,003 |
| 1979 | 7,147 | 1,344 | 8,490 |
| 1980 | 7,396 | 1,389 | 8,785 |
| 1981 | 6,962 | 1,351 | 8,313 |
| 1982 | 6,582 | 1,313 | 7,895 |
| 1983 | 6,365 | 1,289 | 7,654 |
| 1984 | 6,692 | 1,540 | 8,232 |
| 1985 | 6,914 | 1,504 | 8,418 |
| 1986 | 6,495 | 1,742 | 8,237 |
| 1987 | 7,356 | 1,637 | 8,993 |
| 1988 | 7,633 | 1,929 | 9,562 |
| 1989 | 7,837 | 1,900 | 9,737 |
| 1990 | 8,325 | 1,893 | 10,218 |
| 1991 | 8,685 | 1,845 | 10,530 |
| 1992 | 9,257 | 2,197 | 11,453 |
| 1993 | 9,347 | 2,538 | 11,886 |
| 1994 | 9,532 | 2,276 | 11,808 |
| 1995* | 9,574 | 2,430 | 12,004 |
| 1996* | 9,960 | 2,440 | 12,401 |

*Estimates

Note: Data are based on obligations incurred, expressed in terms of 1987 dollars.

Source: Center for the Study of American Business, Washington University. Derived from the Budget of United States Government and related documents, various fiscal years.

Table A-6

**Summary of Federal Regulatory Staffing, 1970-1996**
(Fiscal Years, Full-time Equivalent Employment)

| Year | Social Regulation | Economic Regulation | Total |
|---|---|---|---|
| 1970 | 52,693 | 17,253 | 69,946 |
| 1971 | 62,060 | 17,940 | 80,000 |
| 1972 | 68,117 | 18,248 | 86,365 |
| 1973 | 75,305 | 18,877 | 94,182 |
| 1974 | 75,522 | 19,972 | 95,494 |
| 1975 | 80,523 | 21,720 | 102,243 |
| 1976 | 84,999 | 22,835 | 107,834 |
| 1977 | 85,454 | 23,334 | 108,788 |
| 1978 | 89,955 | 25,077 | 115,032 |
| 1979 | 94,322 | 25,478 | 119,800 |
| 1980 | 95,533 | 26,258 | 121,791 |
| 1981 | 91,909 | 25,300 | 117,209 |
| 1982 | 82,627 | 23,788 | 106,415 |
| 1983 | 78,396 | 22,907 | 101,303 |
| 1984 | 78,804 | 23,043 | 101,847 |
| 1985 | 79,293 | 22,899 | 102,192 |
| 1986 | 78,447 | 23,486 | 101,933 |
| 1987 | 78,660 | 23,144 | 101,804 |
| 1988 | 80,537 | 23,875 | 104,412 |
| 1989 | 83,019 | 23,998 | 107,017 |
| 1990 | 87,351 | 27,289 | 114,640 |
| 1991 | 91,170 | 27,349 | 118,519 |
| 1992 | 96,085 | 29,581 | 125,666 |
| 1993 | 98,239 | 31,338 | 129,577 |
| 1994 | 97,309 | 31,257 | 128,566 |
| 1995* | 98,879 | 32,050 | 130,929 |
| 1996* | 99,564 | 32,355 | 131,919 |

*Estimates

Source: Center for the Study of American Business, Washington University. Derived from the Budget of th United States Government and related documents, various fiscal years.

## Notes to the Appendix

(1) Agricultural Marketing Service was formerly Consumer and Marketing Service.

(2) 1970 data for the Animal and Plant Health Inspection Service are for the Agricultural Research Service.

(3) Data for 1994-1996 were listed under Grain Inspection, Packers and Stockyard Administration.

(4) The Food Safety and Inspection Service was formerly Food Safety and Quality Service.

(5) 1980 data for the Packers and Stockyards Administration were listed within the data for the Agricultural Marketing Service. Data for 1994-1996 were listed under Grain Inspection, Packers and Stockyard Administration.

(6) The Consumer Protection Programs of the Department of Housing and Urban Development have been listed under several sources. Data for 1970 and 1975 are for the Office of Interstate Land Sales Registration; the data for 1980 are for the Office of Neighborhoods, Voluntary Associations and Consumer Protection; staffing figures are not available.

(7) 1970 data for the Drug Enforcement Administration are for the Bureau of Narcotics and Dangerous Drugs.

(8) Budgets for the Customs Service in the Department of Treasury were carried in earlier analyses but were dropped beginning with the 1989 budget due to changes in budget reporting that no longer make separation of the regulatory activities of the agency feasible.

(9) Prior to fiscal year 1973, the Bureau of Alcohol, Tobacco and Firearms was part of the Internal Revenue Service.

(10) The 1996 budget includes a recession proposal for the Chemical Safety and Hazard Investigation Board. This proposal would rescind funding for a board that has not yet begun operation.

(11) 1970 data for the Employment Standards Administration are for the Workplace Standards Administration.

(12) Before the 1995 budget, data for the Office of the American Workplace was called the Labor Management Services Administration.

(13) Prior to the 1993 budget, data for the Pension and Welfare Benefits Administration were part of the Labor Management Services Administration.

(14) 1970 data for the Mine Safety and Health Administration are for the Health and Safety Division of the Bureau of Mines, Department of the Interior; 1975 data are for the Mining Enforcement and Safety Administration, Department of the Interior.

(15) 1970-1985 cost data for the Army Corps of Engineers are for Protection of Navigation under Operation and Maintenance. Frank Torbett of the Civil Works Division of the Army Corps (Washington, D.C.) supplied cost and staffing data for the years 1980 through 1985.

(16) In 1995, the Fish and Wildlife's research and development budget was abolished. All research and development for this agency will now be performed by the National Biological Survey. NBS estimates that 70 percent of its R&D budget will go to the Fish and Wildlife Service.

(17) 1990 costs for the Office of Surface Mining Reclamation and Enforcement reflect a major cut in federal support for the abandoned mine reclamation fund. 1995 costs reflect a similar cut.

(18) Construction grants are excluded from the calculation of the regulatory expenditure and staffing of the Environmental Protection Agency.

(19) 1975 data for the Economic Regulatory Administration are for the Federal Energy Administration.

(20) While the Office of the Federal Inspector for the Alaska Natural Gas Pipeline has not been eliminated in the 1995 budget, no funds were allotted to this agency for 1993 or 1995.

(21) Prior to the fiscal year 1974, the Nuclear Regulatory Commission was part of the Atomic Energy Commission.

(22) The Federal Home Loan Bank System has been excluded from this data because separate data on regulatory spending and staffing are no longer available.

(23) All data for the Federal Reserve System are presented on a calendar-year basis.

(24) The Civil Aeronautics Board was abolished in 1984.

(25) 1970 data for the Commodity Futures Trading Commission are for the Commodity Exchange Authority, Department of Agriculture.

(26) 1970 and 1975 data for the Federal Energy Regulatory Commission are for the Commodity Exchange Authority, Department of Agriculture.

(27) Legislation will be proposed to eliminate substantially the functions currently carried out by the Interstate Commerce Commission and to phase our the Commission during fiscal year 1996. Remaining functions will be transferred to the Departments of Transportation and Justice and to the Federal Trade Commission.

(28) The Renegotiation Board was abolished in 1979.

(29) The Cost Accounting Standards Board was abolished in 1980.

(30) The Council on Wage and Price Stability was abolished in 1981.

(31) 1970 data for the International Trade Administration are for International Activities-Export Control; 1975 data are for the Domestic and International Business Administration.

(32) Regulation of both imports and exports were once performed by the International Trade Administration. For 1990 and after, the regulation of exports is shown under the Export Administration of the Department of Commerce.

(33) 1970 data for the International Trade Commission are for the Tariff Commission, the predecessor agency.

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STATEMENT BY THE

NATIONAL ROOFING CONTRACTORS ASSOCIATION (NRCA)

TO THE

SUBCOMMITTEE ON REGULATION AND PAPERWORK

COMMITTEE ON SMALL BUSINESS

U.S. HOUSE OF REPRESENTATIVES

CONCERNING THE

DEPARTMENT OF TRANSPORTATION'S

FEDERAL MOTOR CARRIER SAFETY REGULATIONS

AUGUST 23, 1995

The National Roofing Contractors Association (NRCA) commends the Subcommittee on Regulation and Paperwork for holding systematic oversight hearings on the impact of federal regulations on small business. NRCA is an association of roofing, roof deck and waterproofing contractors. Founded in 1886, it is one of the oldest associations in the construction industry and has over 3,500 members represented in all 50 states. All NRCA contractors are small, privately held companies; the average member employs 35 people and has sales of just over $3 million per year.

This statement is also being submitted on behalf of the Associated Specialty Contractors (ASC)*, a federation of eight national associations with a combined membership of 26,000 contracting firms. Specialty contractors make up over 25 percent of all construction volume and ASC represents industries employing over 2 million workers.

NRCA has been hearing complaints from members with increasing frequency in the past few years due to the growing volume of federal regulations that they must contend with, including complicated rules from the: Occupational Safety and Health Administration (OSHA), Environmental Protection Agency (EPA), Department of Labor (DOL), Internal Revenue Service (IRS), and Department of Transportation (DOT).

For example, our members must now be experts with asbestos regulations from two different agencies (OSHA and EPA), with OSHA's Fall Protection Standard, with EPA's solid waste and underground storage tank rules, with federal procurement policy, with the Americans with Disabilities Act, and with DOT's Federal Motor Carrier Safety Regulations, just for starters.

## Federal Motor Carrier Safety Regulations (FMCSRs)

Congress passed the Commercial Motor Vehicle Safety Act of 1986, giving states until April 1992 to come into conformance. Except for two items -- the commercial driver's license and drug and alcohol testing -- the detailed list of regulations that apply to trucks weighing 26,001 pounds (gross vehicle weight rating or GVWR) also apply to vehicles at 10,001 pounds GVWR and above.

Like most construction-related businesses, our members utilize small, medium, and, in some cases, larger vehicles to transport materials needed in the roofing process. We have always taken umbrage at being generically included in the FMCSRs to the same extent as over-the-road haulers and shippers. The differences between what shippers and roofing contractors do are enormous: there are differences in the amount of time spent on the road, the quantity of goods transported and the distances travelled. Obviously, the reasons for even being in business are *completely* different -- shippers are in the business of transporting goods from one place to another, while roofing contractors are in the business of installing roofs and, in order to do so, must transport supplies to complete the job. Basically, driving is incidental to roofing and other specialty construction work.

We fully support safe highways. However, because the current regulations impose heavy paperwork and financial burdens on small businesses, many, in frustration and exasperation, defy rather than comply with them.

In 1992, DOT responded to a request made by President Bush to review existing regulations and suggest changes that would reduce the economic burden placed on small businesses. These suggested changes were outlined in DOT's Report to the President: Review of Regulations. As a result, DOT published two Federal Register notices asking for comments on proposals that would alleviate some of the burdens of the Hours-of-Service and Accident Notification requirements.

Included in this report was a Federal Highway Administration (FHWA) recommendation "amending the definition of a 'commercial motor vehicle' to include only vehicles with gross vehicle weight ratings of 26,001 or more pounds." We wholeheartedly supported this recommendation then, as we continue to do now. A summary of the DOT Report can be found on the next page.

If the intent of the FMCSRs is to increase safety on the nation's highways, then it makes sense to focus attention on those who have the greatest safety risk potential. The current "shotgun" approach treats small businesses using light vehicles the same as overland carriers hauling cargo from Portland, Maine to Portland, Oregon. Focusing on the largest vehicles and those that transport many passengers and large amounts of hazardous material will net the largest safety dividend.

Roofing contractors have other incentives for supporting safety on the road -- their bottom line. Working safely has a positive impact on accident rates, productivity, and morale. In order to maintain competitiveness, roofing contractors must control unnecessary costs, e.g., increased insurance premiums, through active safety and loss control programs.

Additionally, the highways are patrolled. Just because a vehicle does not fall under the FMCSRs does not mean it is not subject to state enforcement of driving laws. In fact, the state patrol would be freer to patrol the highways by not having to waste time checking hours-of-service logs for drivers who spend less than a fifth of their day on the road.

The FHWA recommended performance-based regulations. (However, on January 3, 1995, DOT unexpectedly withdrew their Advanced Notice of Proposed Rulemaking and closed the public docket.) Although the FHWA's intent was good, there needed to be more specificity in its approach. Our experience with performance-based regulations is that they invite confusion and non-compliance. We oppose being swept into exhaustive regulations that include us simply because we drive trucks, but we also do not want regulations that, in an attempt to appeal to everyone, are so subjective as to make compliance impossible.

Again, we thank you for this opportunity to present our comments. We look forward to working with the Subcommittee and the FHWA in the continuing endeavor to achieve reasonable, enforceable, and effective motor carrier safety regulations.

* Members of the Associated Specialty Contractors: Mason Contractors Association of America; Mechanical Contractors Association of America; National Association of Plumbing-Heating-Cooling Contractors; National Electrical Contractors Association; National Insulation Association; National Roofing Contractors Association; Painting and Decorating Contractors of America; Sheet Metal and Air Conditioning Contractors National Association.

**Summary:** DOT Report to President Bush

Listed below are proposed changes to the FMCSRs that DOT prepared in response to President Bush's request for reducing burdensome regulations. If implemented, the following would have had a beneficial effect on the roofing industry.

49 CFR Part 390 - Federal Motor Carrier Safety Regulations - General Requirements: DOT proposed to change the definition of a commercial motor vehicle to include only those with a GVWR of 26,001 or more pounds. This would have relieved a great deal of the paperwork burden on roofing and specialty contractors, as well as most small businesses. Notwithstanding a placarded vehicle, *none* of the FMCSRs would have applied to other vehicles with GVWRs less than 26,001 pounds.

49 CFR Part 391 - Qualification of Drivers: This proposal would have dramatically reduced the amount of paperwork required for drivers of vehicles between 10,001 and 26,001 pounds GVWR. Specifically modified would have been: Subpart C, which relates to the background and character of drivers, and annual review of the employee's driving record; Subpart D, which includes the examination and testing requirements; and Subpart F, which requires filing and record keeping.

49 CFR Part 395 - Hours of Service Drivers: This would have changed the rule to allow the "hours of service" clock be reset for drivers off duty for 24 consecutive hours. In other words, if a driver had an entire day off, the calculation for the 60-in-7 (60 hours in seven days) and the 70-in-8 rules would begin anew, making the probability of violating the rule for roofing and specialty construction much harder.

49 CFR Part 392 - Driving of Motor Vehicles: DOT proposed to eliminate the requirement to check the load after 25 miles of driving.

*J.E.REDINGTON CO.*
*639 LEFFINGWELL*
*KIRKWOOD, MO. 63122*

*ATTN: "HEARING"*

*I have written several letters to both Representative Talent and Senator Bond in Washington after noting your letter in the paper. I was thinking I sent you a copy of these letters, but maybe not. Sorry.*

*Anyway, I would like you to know that I received responses from both these gentlemen and am enclosing copies of the letters for your review. It is not always true that our representatives don't listen to us. This is one such proof, huh? It gives encouragement to me, for one. I hope the Republicans can get more things accomplished while they have the opportunity. Let's hope they get a larger majority to override any possible vetoes and we get a Republican President next time around.*

*Thanks for your interest.*
*Louis & Marcella Harris*
*516 S. Harrison Ave.*
*Kirkwood, MO. 63122-5909*

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August 8, 1995

J. E. Redington Company
639 Leffingwell
Kirkwood, Missouri 63122

Dear Sirs:

Just over a year ago I had my bathroom remodeled. This included a new commode, 1.6 gallon. I had a plumber here to check why the toilet would not flush the waste out of the toilet. Was told by the plumber that it was because the 1.6 gallon toilet did not provide enough force to move the waste out. So I have to flush the toilet three times to accomplish what one flush would do with my old toilet. So I am stuck with a remodeled bathroom that is more unsatisfactory than the old one. It does not make any sense to reduce the size of the toilet to conserve water when I have to use much more water than in the past. If I had known about this before I would have kept my old toilet and tried to have it refurbished.

This regulation needs to be changed so that people in the future can purchase a toilet that works more efficiently than the one being replaced.

Thanks for you assistance in getting this mess corrected.

Sinderely,

James E. Lockhart

JEL/mw

37 Topping Lane
Des Peres MO 63131
9 August 1995
314/821-2728

Attention: J. E. Redington Co.

Subject: Water "saving" appliances

About eighteen months ago, I stayed overnight with some friends in a Chicago suburb which had recently been built up, and the new design toilet would not flush completely until the third try. My hostess waved away my apologies and said that from the beginning they had sometimes needed four or more cycles. This is water-conservation?

It would be interesting to discover how many of those who write such stupid regulations endure the consequences themselves.

Richard E. Wendt, Jr.

ISBN 0-16-052717-1